INTRODUCTION

The analysis of democratic governance within Colombia presents a particularly thorny set of challenges. This is due not only to longstanding paradoxes and ambiguities within its political and legal systems, but also to the dynamics of violence and evolving degrees of respect for human rights and rule of law norms in recent years. Especially during the two-term (2002–10) presidency of Álvaro Uribe, governance has evolved in complex ways that defy clear-cut evaluation.

From a structural and long-term perspective, Colombia presents a number of contradictions. In the last 150 years, the country has experienced almost no periods of military rule, a tradition of civilian-led stability that stands out relative to its coup-prone neighbors in Latin America. In addition, Colombia has a long tradition of respect for the independence of the judiciary as well as, since 1910, a unique form of judicial review of the constitutionality of laws and governmental actions. In 1991, a new constitution was promulgated that strengthened judicial protection of human rights, promoted equality and nondiscrimination, and deepened the democratic mechanisms of citizen participation.

Thus, in some respects, Colombia appears to be a well-established and advanced democracy. In other areas, however, severe shortcomings seriously undermine the extent of democratic rule in the country. Some of these deficits are historical: throughout its evolution, the Colombian state has been very precarious. Official institutions have never completely controlled the entire territory, and private armed actors have traditionally filled the breach. More specifically, for nearly 50 years Colombia has endured a protracted internal conflict. At its core, several leftist guerrilla groups, most notably the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), fight against Colombian authorities while also seriously and repeatedly violating international humanitarian law. The conflict is both symptom and cause of Colombia’s troubled social and economic realities, including persistent and dramatic inequality and widespread poverty. Colombia’s Gini coefficient, a measure of inequality in which 1

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represents complete concentration of wealth, is 0.58, one of the highest in the world. Roughly 46 percent of the population lives in poverty, with 16 percent in extreme poverty.¹

But the Colombian conflict is not a classic revolutionary conflict in which the state confronts an armed insurgency.² It also includes the participation of right-wing paramilitary groups with strong ties to some sectors of the Colombian military as well as politicians, landowners, and drug traffickers. Particularly in the 1990s and 2000s, these paramilitary groups have been responsible for many of the conflict’s worst abuses, including hundreds of massacres, thousands of killings, and innumerable forced disappearances. When combined with additional, less-organized forms of criminal and social violence, the sum is a country that for the last 50 years has had extremely high rates of homicide and kidnapping as well as an ongoing crisis of internal displacement.

In short, Colombia combines features of an institutionalized democracy with those of a more unstable state—or even an authoritarian regime—where citizens’ rights are violated due to state incapacity or unwillingness to offer adequate protections. Scholars have thus had trouble characterizing the country’s ambiguous political system. Colombia is certainly not a dictatorship, nor is democracy a mere facade. Popular elections are held regularly to select governments, and the system of constitutional checks and balances is more or less effective. But neither can it be considered a consolidated democracy, given the widespread violence, human rights abuses, and profound social inequalities.

President Uribe’s two terms epitomized the contradictory elements. Security improved for many Colombians, thanks to a more widespread presence of the armed forces throughout the nation’s territory, the partial demobilization of right-wing paramilitary groups, and a series of military successes against left-wing guerrillas, especially the FARC. But at the same time, the armed conflict with the guerrillas showed little sign of ending, the demobilization of the paramilitary groups has been highly troubled, and the humanitarian crisis persisted—and in some aspects even worsened. The end result of all these factors is that violence in Colombia remains intense.

Institutional developments are similarly paradoxical. The reform of the constitution to allow the immediate reelection of President Uribe in 2006, and his attempts to maximize executive power, undermined the system of checks and balances established by the constitution.³ Meanwhile, many opposition leaders, human rights activists, and even Supreme Court justices were subjected to surveillance and illegal wiretapping by the government’s primary security and intelligence agency, the Department of Administrative Security (DAS—see Accountability and Public Voice). Finally, it also became evident that alliances between paramilitary organizations and politicians affected national and regional elections. Nonetheless, the system maintained sufficient safeguards to block some of Uribe’s highest priority initiatives, despite his enormous personal popularity. In addition, in a process known as parapolitics, a series of investigations and trials allowed for significant public debate and some accountability for the shady electoral alliances.⁴

By the end of Uribe’s two terms, Colombia had, in some sense, more state control but less rule of law. His administration provided improvements in security for most segments of the population; overall, Colombia now has more state control over the nation’s territory and less violence. But the humanitarian crisis and armed conflict continued, and the carefully constructed system of checks and balances experienced significant strain.

This improvement in security, combined with Uribe’s populist style of governing, explains much of Uribe’s sustained high popularity throughout his tenure. After the guerrillas’
military successes against the Army in the latter half of the 1990s and an utterly failed peace process with the FARC, many Colombians embraced firm leadership that was perceived as restoring the authority of the state in the eyes of both citizens and the world.

In this context, Juan Manuel Santos was elected in 2010 as the new president, with the support of the uribista political forces. It was assumed that Santos would maintain the basic policies and political style of his predecessor. This has not been the case: President Santos has preserved some of Uribe’s policies but has also introduced important changes that could yield gains for governance and the rule of law. As of spring 2011, it is not clear what the impact of the changes introduced by President Santos will be—nor whether he is willing and able to sustain them—but it appears that Colombia’s democracy is headed for yet another new phase.

ACCOUNTABILITY AND PUBLIC VOICE

Colombian governments have, with very few exceptions, been civilian regimes chosen by popular election. For decades, these contests have had profound flaws, but they are held regularly and conducted in a more or less fair manner. Elections are conducted and supervised by the National Electoral Council (CNE), which is the highest electoral authority, and the Registrar. Both institutions are formally independent of the central government and Congress so as to avoid undue political interference with the ballot. The law also establishes state financial support for political parties and movements and for their electoral campaigns. Private financial contributions to organizations are regulated, and the law establishes limits not only on private contributions to political organizations but also on total spending in electoral campaigns.5

While the legal framework is adequate, the Colombian electoral system still presents serious shortcomings. First, in institutional terms, the independence of the electoral authorities is still weak. As the CNE’s nine members are elected by Congress for a period of four years, the body’s composition depends on the will of the most powerful political parties—actors it is supposed to control. Second, electoral authorities lack the capacity or will to systematically and impartially enforce laws controlling the undue influence of legal and illegal money in elections. On many occasions, independent civil society-led investigations have shown that parties and political movements have surpassed spending limits or violated regulations; however, the electoral authorities have neither controlled nor sanctioned these illegalities, and face difficulties in merely accessing party accounts.6

Third, there is clear evidence that criminal organizations, especially paramilitary groups, have been interfering with elections for at least the last 10 years. Scores of congressmen and regional political leaders, based especially (though not exclusively) in northern Colombia, made illegal pacts under which various armed groups coerced citizens to vote for politicians who subsequently acted as the organizations’ allies and protectors. The extent of this “parapolitics” phenomenon was far reaching and implied profound transformation of the political landscape. For instance, a recent investigation concluded that in multiple regions, at least one out of every three local politicians had some relations with illegal armed groups.7

This infiltration of criminal organizations into the electoral process prompted important judicial investigations that have resulted in the imprisonment of many politicians. By July 2011, more than 110 members of Congress were being investigated by the judiciary, especially by the Supreme Court, which is charged with conducting criminal investigations of legislators: 36 have been convicted, 41 were on trial, and 36 more were under formal investigation.8 Most, though
not all, of the investigated or convicted politicians formed part of President Uribe’s coalition. Uribe and other officials responded with frequent, vociferous rhetorical attacks on the court—and with or without the president’s knowledge, retaliation by the DAS (see below).

The reaction of the judicial system—and especially the Supreme Court—to the infiltration of criminal organizations in the electoral and political systems serves as a microcosm of Colombia’s democratic ambiguities. Infiltration of institutions and influence over politicians has been so extensive that some analysts speak of the capture of these institutions by the mafia-political alliances. At the same time, however—at least at the national level—the judicial system was able to react with courage and, to a certain degree, forestall a total capture of Colombian institutions by criminal organizations.

The parapolitics process highlights the importance of Colombia’s independent judiciary as a guarantor of checks and balances. This status acquired particular importance in light of the 2005 constitutional reform establishing the possibility of one immediate presidential reelection. The controversial amendment was approved in order to allow the immensely popular President Uribe to stand for a second term. However, the change disrupted the equilibrium established in the 1991 constitution, which featured an institutional framework constructed on the premise that reelection was proscribed. While the president does not directly appoint other officials, he or she has a strong influence on the selection of the attorney general, the inspector general (procurador, a position with important responsibilities in monitoring the conduct of public servants), the ombudsman, the comptroller general, the members of the judicial tribunal in charge of investigating judges and lawyers, and the members of the central bank, among others. Furthermore, the combination of President Uribe’s authoritarian inclinations, high popularity, and broad support within congress created reasonable fears that the executive’s influence would erode the independence of the judiciary—the final bulwark of the system of checks and balances.

The election of President Santos in 2010 also reflected the vigor of Colombian separation of powers. Santos’s election was possible because the Constitutional Court barred an additional constitutional reform to allow Uribe a third term. Specifically, the court found that a national referendum on the proposed change could not take place because of serious procedural breaches during its approval in Congress and because, in any case, a second reelection would destroy the checks and balances system. In an important demonstration of elite commitment to basic democratic principles, President Uribe accepted this judicial ruling, which occurred very late in the process. Santos, who served as minister of defense from 2006 to 2009, was subsequently elected with the support of Uribe’s coalition.

The electoral process in 2010 yielded surprises, though drama was largely concentrated in the first round of the presidential contest. Considering that President Uribe’s approval rating was generally over 70 percent, with even higher spikes on certain occasions, it was unsurprising that uribista political forces won a majority of seats in the March 2010 congressional elections. In the Senate, parties clearly aligned with Uribe obtained roughly 60 percent of the seats, led by the Social Party of National Unity (Partido de la U) with 28 of the 102 seats, the Conservative Party (CP) with 22 seats, and the Party of National Integration (PIN) with 9. In contrast, opposition parties polled poorly: the Liberal Party took 17 seats, while the Democratic Alternative Pole (PDA) won 5. Radical Change, a centrist grouping led by Germán Vargas, a previous uribista who broke with him over the third term issue, also garnered 8 seats. The breakdown was similar in the House of Representatives, as the U won 47 of the 166 seats, followed by the CP with 38, the Liberals with 37, Radical Change with 15, and the PIN with 12. As in past years, suspicion of criminal infiltration was widespread. One leading parapolitics
researcher noted that up to 22 senators and 25 percent of representatives might maintain links with illegal organizations.\textsuperscript{10} This was especially true for the PIN, a new political party that was composed of candidates whose previous parties were dissolved because of documented parapolitics involvement.

Due to Uribe’s popularity, all analysts supposed that the candidate supported by the uribista forces, Santos, would win the presidency easily. Instead, a former mayor of Bogotá, Antanas Mockus, who formed a new political movement (the Green Party) with three other respected former mayors of Bogotá and Medellín, experienced a spectacular rise in polling numbers. Mockus’s rise was based on a political discourse that focused on respect for the law, the protection of public financial resources, and the defense of life in the face of Colombia’s lethal violence. The platform was a clear critique of Uribe’s government, which was accused of tolerating corruption and extrajudicial killings. This “green wave” vaulted Mockus into the lead, according to polls during the run-up to the May first round. Toward the end of first-round campaigning, for reasons that provoke heated debates among analysts but are at least partly related to Mockus’s rhetorical missteps during televised political debates and the Greens’ lack of electoral machinery, the green wave diminished, and Santos eventually finished in first by a comfortable margin. Nevertheless, the Green Party obtained over 20 percent of the votes in the first round and 27 percent (to Santos’s 69 percent) in the second round, an important result illustrating that in spite of Uribe’s popularity, many Colombians rejected the illegalities committed during his presidency.

Perhaps in response to this message, the newly-elected Santos initiated important changes to some of Uribe’s more confrontational policies. Almost immediately upon entering office, he attempted to repair relations with the high courts, opposition forces, and the leaders of neighboring Ecuador and Venezuela, with whom diplomatic relations had been suspended following a string of diplomatic crises exacerbated by ideological differences. The domestic changes were most dramatic. Santos has tried to replace Uribe’s polarizing style. Whereas Uribe had strongly opposed bills that sought the restitution of land to internally displaced persons and reparations to the victims of serious human rights violations—including victims of state actors—Santos offered strong support; a combined victims and land rights bill passed in May 2011. In addition, prominent opponents of a third term for Uribe, such as new interior minister Germán Vargas, were included among his key appointments. President Santos justified these changes with the idea that Colombia needed a national unity government, and he invited opposition forces, including the Liberal Party and Green Party, to join the coalition. The Liberals accepted very quickly and the Greens some months later, leaving the small PDA bloc as the sole thread of opposition to both Uribe and Santos.

The result has been that, by July 2011, Santos enjoyed not only substantial popular support but also an overwhelming majority in Congress: 89 senators out of 102 were part of the governmental coalition.\textsuperscript{11} The cost of this strategy, however, has been growing tension with the core uribista forces. By early summer 2011, even if there was not (yet) a formal break between Santos and Uribe, the ex-president’s hardline supporters were essentially playing an opposition role on many key issues.

Another group with which the Santos administration has sought to change the tenor of relations is nongovernmental organizations (NGOs). Colombia features a large NGO sector that operates generally without legal restriction and vigorously advocates on numerous political, social, and development-related issues. However, under Uribe there were also constant verbal attacks against NGOs that criticized government actions. Government officials, including Uribe
himself, at times suggested that NGO workers might have ties with the guerrillas or were enemies of democracy and the state. In the eyes of civil society, this stigmatization contributed to the climate of violence that has resulted in the deaths of scores of NGO workers and activists (see Civil Liberties).

Media workers were also subject to harsh rhetorical denunciations. The media in Colombia is yet another realm of paradox. Media outlets and journalists continue to enjoy constitutional and legal protections, as they have for decades. There is no official censorship, and the many private outlets operate free from state pressure. Journalists are not imprisoned on the basis of their reporting. Media outlets, especially a subset of the printed press, have played an important democratic role in recent years by publicizing important cases of corruption and atrocities committed by paramilitary groups and state security forces. For instance, the scandal of the “false positives” extrajudicial killings by the military (see Civil Liberties) initially garnered attention thanks to revelations made by the media.

Yet there are many threats as well. Defamation remains criminalized, and in 2010, at least 10 journalists faced potential prosecution for libel, with charges mostly filed by politicians and other public servants. In recent years well-known journalists Alfredo Molano and Claudia López each faced prosecution; López was denounced by former president Ernesto Samper. In the end, both were acquitted, but journalists express worries that such prosecutions promote self-censorship.

There are at least two other factors that negatively affect press freedom. First, the media is highly concentrated. The most important outlets are either themselves part of economic conglomerates (like the newspaper of record, El Tiempo) or have strong ties to powerful economic groups, like the radio and television network RCN. Owners’ economic interests may at times limit editorial independence. One example was the closure in February 2010 of the important newsweekly Cambio, published by the El Tiempo Editorial Group. The shuttering was widely perceived to have been caused by ownership’s disapproval of the magazine’s investigative reports exposing corruption scandals, most notably graft within a large-scale agricultural subsidies program (see Anticorruption and Transparency). Second, journalists in Colombia have been subject to high levels of violence. According to the Press Freedom Foundation (FLIP), more than 138 journalists have been murdered since 1977 because of their work. Most of these crimes remain unsolved. FLIP reported that as of the end of 2010, intellectual authors of the crimes have been identified and sentenced in only five cases. In the past few years, the lethal violence has diminished, but threats and intimidation remain high. In 2010, FLIP reported 2 murders, 1 kidnapping and 60 threats against journalists, abetting high levels of self-censorship, particularly in the provinces.

One particular scandal exemplified the Uribe administration’s conflicted attitude toward checks and balances, press freedom, and NGO autonomy, as well as its tendency to polarize Colombian society by establishing a radical division between friends and enemies. This was the illegal wiretapping and surveillance of journalists, NGOs, opposition politicians, and Supreme Court justices carried out by the DAS. The issue came to light in 2009 and accelerated throughout 2010 as the involvement of ever-higher officials was revealed. By early 2011, several DAS employees had been convicted, with various others, including members of the office of the presidency, under investigation. Uribe himself was under investigation by a congressional commission; while he claims to have had no role in the illegal acts, the newsmagazine Semana reported that the DAS bureaus most deeply implicated in the scandal began operating during his administration. As part of its efforts to overcome the legacy of Uribe’s governing style, the
Santos administration has announced that there would be no illegal wiretapping during his government, and it has been more open to accepting criticism as a natural characteristic of democratic debate.

**CIVIL LIBERTIES**

The Colombian constitution contains a generous set of rights, which includes not only civil and political rights but also social and collective ones. In addition, the constitution grants treaties ratified by Colombia superior normative force in relation to any ordinary law. Additional judicial mechanisms guarantee the protection of these rights. Any citizen has the option, via an *actio popularis*, to challenge the constitutionality of any law or governmental decree before the Constitutional Court or the Council of State. In addition, any person can use special writs, in particular one called the *tutela*, to request judicial intervention to protect his or her fundamental rights when these rights have been threatened or violated. In another layer of protection, any person unlawfully detained can use the writ of habeas corpus before any criminal judge, who can order the detainee’s immediate release. Finally, any person whose rights have been affected by the authorities can claim damages before the judicial system. Some of these judicial mechanisms, particularly the tutela, have been quite effective for the protection of constitutional rights.

Aside from offering protections to individuals, these writs have also facilitated the intervention of the judicial system in general, structural situations. For instance, the *actio popularis* allowed human rights NGOs to challenge the constitutionality of the Justice and Peace Law (LJP), which created the legal framework for the demobilization of paramilitary groups, arguing that it amounted to legalized impunity and violated the rights of victims. The Constitutional Court accepted the complaint in part and introduced important modifications to the law. Moreover, since 2004, after declaring that government policies toward internally displaced peoples (IDPs) did not meet constitutional standards, the Constitutional Court has been supervising governmental policy, which has led to improvements in the conditions of IDPs, although their situation remains critical.\(^{18}\)

Nevertheless, in spite of legal recognition and notable judicial protections, the persistent fact is that amid rampant violence, Colombia has suffered from a profound human rights crisis for at least three decades.

Besides the actors engaged in the prolonged armed conflict, powerful criminal organizations commit violent crimes such as kidnapping and murder. The homicide rate during even the most peaceful years—in the mid-1970s—was a relatively high 22 per 100,000 persons. During some years, such as 1990, it reached 80 per 100,000 persons, one of the highest rates in the world.\(^{19}\) There are important relationships between the political violence linked to the armed conflict and other forms of criminal and social violence. One particular element acts as a thread throughout Colombia’s lawlessness: drug trafficking, which has fueled the armed conflict by providing a steady resource stream for both guerrillas, especially the FARC, and the paramilitary groups, who finance much of their activity with drug money.\(^{20}\)

The confluence of political and criminal violence has led to thousands of extrajudicial killings and forced disappearances, many of which were committed by state agents or by paramilitary groups acting in collusion with sectors of the National Police or the military.\(^{21}\) Colombia also has approximately 5 million internally displaced persons, which amounts to over
10 percent of the population.\textsuperscript{22} These victims were forced to abandon their lands by armed actors, sometimes in traditional battles over territory, other times in collusion with rural investors seeking to take over fertile land. Between 1980 and 2010, roughly 6.5 million hectares, or about 15 percent of the country’s rural productive land, were abandoned by IDPs, in many cases ending up in the hands of armed actors.\textsuperscript{23}

During Uribe’s two terms, security improved along many dimensions. His signature policy, known as “democratic security,” combined different strategies: aggressively confront the guerrillas, launch a peace process with paramilitary groups, and increase the presence of the army and the police throughout the national territory by significantly increasing military spending (with significant support from the U.S.).

In some respects, the strategy was successful. The guerrillas were forced to retreat far away from the cities, main roads, and economic centers. Some of the FARC’s main leaders, such as Raúl Reyes, Martín Caballero, and Negro Acacio (all three names are aliases), were killed in military operations. In July 2008, the group lost its most prominent hostages, chiefly former presidential candidate Íngrid Betancourt and three American military contractors, when a dramatic operation known as Operation Checkmate freed a group of 15 hostages, all of whom had endured years of horrific conditions. The FARC’s founder, Pedro Antonio Marín (nom de guerre Manuel Marulanda) died in March 2008; that same month, another top leader was killed by one of his own fighters.

In addition, from November 2003 to August 2006 some 32,000 paramilitaries formally demobilized and surrendered their weapons,\textsuperscript{24} while the number of massacres and the homicide rate decreased significantly in the initial years of Uribe’s first term,\textsuperscript{25} though the homicide rate never dropped below 30 per 100,000. Moreover, Colombians could travel throughout the countryside with less fear of being kidnapped by guerrillas. However, the guerrillas, even if weakened, remain far from defeat and even managed to exhibit renewed initiative in 2009 and 2010.\textsuperscript{26} According to The Rainbow Foundation, an NGO that monitors the evolution of Colombia’s armed conflict, the number of military operations attributed to the FARC, which fluctuated between 949 and 1057 between 2003 and 2007, jumped to 1614 in 2009 and 1947 in 2010.\textsuperscript{27}

The process with the paramilitaries, meanwhile, has been ambiguous and controversial. The Uribe administration claimed that following the demobilization, paramilitarism as such had ended in Colombia. Nevertheless, from the beginning of the process there were doubts about the effective dismantlement of these groups’ power, which comes as much from their financial resources and collusion with authorities as from their weapons. Indeed, new criminal organizations, with different names but activities similar to those of former paramilitaries, have emerged in many of the places previously under paramilitary control.

The Uribe government insisted that these new criminal bands (or \textit{bacrim}, as the government labels them) represented a phenomenon distinct from paramilitarism. The nature of these groups—and even their appropriate name—has been hotly debated. The new groups’ alliances appear to be more fluid, and their structures more atomized, than the blocs that operated under the AUC banner, while cooperation with the security forces seems to have diminished. However, both analysts and the Santos government agree that the groups are a serious threat to Colombian democracy. These bacrim (some analysts prefer the label neoparamilitary) comprise around 10,000 members, operate in many parts of the country—including, at times, in collusion with sectors of the army and police—and have been involved in thousands of killings and forced disappearances.\textsuperscript{28}
Demobilization of the paramilitary forces has yielded only tenuous gains for victims. After the 2005 Constitutional Court ruling, the LJP established an alternative punishment of five to eight years in prison for paramilitaries involved in war crimes or crimes against humanity who confess all their crimes and make efforts to provide reparations to victims. Some confessions have resulted in improved understanding of paramilitary groups’ operations and the extent of their complicity with politicians, landowners, and sectors of the military. According to the Inter-American Commission on Human Rights (IACHR), these confessions helped to facilitate “the exhumation of 2,719 graves and the remains of 3,299 persons, of which 1,100 were fully identified and 973 have already been delivered to their families.”

According to a report by the attorney general’s office, by March 2011, paramilitaries had confessed to over 48,000 murders and 4,800 forced disappearances. Nevertheless, the extradition of the top paramilitary leaders to the U.S. in May 2008 and the failures of the LJP process limited the scope of the revelations; only a small subset of the paramilitaries are still contributing to the truth process. According to the United Nations High Commission on Human Rights (UNHCHR), even if the confessions have “revealed a significant number of homicides, they did not give a complete picture of the diversity, context and systematic nature of violations committed by paramilitary organizations.” Finally, the first confirmed conviction under the LJP’s terms did not occur until June 2010, when two paramilitaries were convicted, with the ruling confirmed by the Supreme Court.

In addition, the legal circumstances of many paramilitaries remain highly uncertain. Of the 32,000 demobilized paramilitaries, only 3,000 suspected war crimes perpetrators were obligated to pass through formal LJP procedures and confess their crimes. In theory, the other 29,000 “ordinary combatants” were to receive pardon and be reinserted into society. However, not only have reinsertion programs often failed and led former combatants to return to crime, but both the Supreme Court and the Constitutional Court have declared (on separate occasions involving separate laws) that the legislation used to regularize the status of the demobilized paramilitaries was legally deficient and failed to adequately respect victims’ rights. As of July 2011, the status of yet another bill remains uncertain, keeping these thousands of former combatants in a state of confused limbo.

Meanwhile, violations continue to occur. For instance, according to the Colombian Commission of Jurists, a respected human rights NGO, between July 2007 and June 2008, at least 1470 people died in circumstances that can probably be ascribed to illegal actions perpetrated by the various armed actors. Of the 913 cases in which it was possible to establish the perpetrator, 296 were attributed to public servants, 460 to paramilitary or bacrim groups, and 157 to guerrillas. In particular, the number of IDPs grew significantly in the last few years. Finally, after a much-lauded multiyear downward trend in urban crime, homicide numbers in a number of cities, particularly Medellín and Cali, spiked starting in 2008. Analysts attributed the trend to changes in the conflict’s regional dynamics as well as the leadership vacuum created by the extraditions of criminal kingpins to the U.S.

One of the gravest manifestations of human rights violations in recent years involved thousands of extrajudicial killings, the so-called “false positives,” carried out largely by the army. The expression refers to the “illegal executions of civilians manipulated by the security forces in order that they appear as legitimate guerrillas or delinquents that were killed in combat,” as characterized by UN Special Rapporteur on Extrajudicial Executions Philip Alston. Stimulated by some army units’ interest in exhibiting guerrilla body counts as a metric of success, the UNHCHR’s Colombia office alleged that more than 3,000 killings occurred, mostly between 2004 and 2008. The number of cases decreased starting in 2008, when the
Uribe government, recognizing the seriousness of the situation, followed up on an internal investigation within the military by removing military members, even high-ranking officers, bearing potential responsibility in the killings. Protocols to combat such practices have been drafted and are in the process of implementation, and many of the murders are being investigated by the attorney general’s office. Yet the level of impunity remains high, and the few convictions that have occurred involve low-ranking members of the military.

In addition, in April 2011, a press investigation revealed that the conditions of detention in military facilities for convicted officers are extremely lenient. For the few criminals convicted, on the other hand, Colombian prisons have been characterized by terrible conditions for decades, especially severe overcrowding. In 1998, the Constitutional Court ruled that conditions amounted to a massive violation of inmates’ rights and ordered the government to enact relief measures. In the following several years the situation improved, but as of 2010 prisons were again overcrowded by about 40 percent. Roughly 40 percent of prisoners are in pretrial detention and high-ranking criminals have long been able to exert control over criminal enterprise from within prison walls.

The violence and threats by armed groups, especially those linked to paramilitaries, have also affected civil society, especially groups working in human rights. In its 2009 report, the IACHR stressed that “the work of human rights defenders and community and trade union leaders continued to be affected by threats against their life and personal safety” and reported numerous cases of murders or threats against human rights activists. Violence against victims’ rights advocates and social leaders advocating on behalf of the displaced has intensified as land reform efforts have acquired greater momentum. Human rights activists and NGOs were also subject to the illegal wiretapping and surveillance committed by the DAS. These attacks appear to have declined substantially with the arrival of the new government. In response, the government has developed several programs for the protection of witnesses and victims, including both general and LJP-specific protection programs run by the attorney general’s office, and an interior ministry-run program that focuses on shielding human rights activists, trade unionists, and social leaders. Despite these important efforts, the Santos administration has been unable to overcome severe shortcomings within the programs—including alleged spying by some of the very security forces assigned to protect—and halt violence against these vulnerable citizens.

For years, Colombia has been notorious as the world leader in violence against trade union members. According to the National Labor School (ENS), an NGO that documents the violence, between 1986 and August 2010, 2,842 trade union members were murdered; about 25 percent of the victims were union leaders. Violence diminished under Uribe: homicides declined from 193 in 2001 to 47 in 2009. Nevertheless, 550 union members were killed between August 2002 and August 2010. In the past few years, especially because of political pressure from the international community, trade unions, and human rights organizations, Colombian authorities have undertaken important efforts to reduce the longstanding impunity for these crimes. According to ENS, before 2007, there were only 50 judicial decisions; the number increased in the following years and reached 207 in July 2009. Most verdicts have been convictions. However, impunity remains over 95 percent, and material authors have been prosecuted far more often than intellectual ones. The intense violence against union members has had profoundly negative effects on the capacity of trade union organizations to develop and protect the rights of their members: at less than 5 percent, Colombia has one of the lowest levels of unionization in Latin America.
In June 2011, Congress approved an ambitious, long-awaited bill to provide material reparations to all victims of the armed conflict and to return land to IDPs. President Santos strongly supported the law, in stark contrast to Uribe, who opposed a similar project on the grounds that it was financially unfeasible and that it was unacceptable to place victims of illegal armed actors and those of the security forces on the same plane. Although human rights organizations have pointed to some flaws in the bill and implementation will pose an enormous challenge, its approval marked a fundamental step toward ameliorating the situation of millions of victims.

On the other hand, inequality and discrimination in Colombia are deeply rooted and seriously affect the enjoyment of civil and other rights. Colombian legal norms prohibit discrimination on many grounds, such as gender, race, disability, and religious belief. Freedom of conscience and belief are in general well respected. The only notable absence of protection involved same-sex couples, but in 2008 and 2009 the Constitutional Court extended many of the rights enjoyed by married heterosexuals to same-sex couples. In addition, the Colombian legal system authorizes modest affirmative action in favor of women and ethnic minorities in order to ameliorate gender and race-based discrimination, and has incorporated other recent improvements, such as ratification of the UN Convention on the Rights of Persons with Disabilities.

Nevertheless, in social, economic, and political terms, discrimination against women and ethnic minorities persists. Congress currently is only 12 percent female, much lower than most other Latin American countries. Women have higher rates of unemployment and receive lower wages than men in similar jobs. Violence against women in Colombia remains epidemic. Roughly 30 percent of all women report that they have been physically assaulted by their husband or companion; 11 percent have been raped. The situation for those subjected to the armed conflict is even worse. According to a recent report, from 2001 to 2009 nearly 500,000 acts of sexual violence were committed by armed actors. This violence remains in almost total impunity: according to the attorney general’s office, by March 2011 demobilized paramilitaries had reported only 86 cases of sexual violence.

Social indicators in terms of health, poverty, employment, housing, access to justice, and other measures consistently lag those of other Colombians. For instance, the infant mortality rate for Afro-Colombians is 44 per 1000 live births, more than twice the rate for the general population, and Afro-Colombian female life expectancy is 67 years, as opposed to 78 within the general population. Moreover, indigenous and Afro-Colombian communities and individuals make up a disproportionately large percentage of the IDP population. The probability of becoming an IDP is 84 percent higher for Afro-Colombians than for the rest of the population. This disproportionate vulnerability to forced displacement is aggravated by the fact that many traditionally indigenous and Afro-Colombian territories are located in zones that are strategic either for armed actors engaged in highly profitable illicit economic activities or powerful agricultural and mineral interests seeking to expand legal operations.

**Rule of Law**

As noted above, Colombia has a long tradition of significant judicial independence, at least compared to other Latin American countries. Judicial nominations are not made directly by the president or political parties; rather, under the 1991 constitution, judges are appointed via a
merit-based selection process coordinated by a sub-body within the judicial council. High court jurists in Colombia—in particular, members of the Constitutional Court—are generally held in higher esteem than in many regional peers.

Aside from the Constitutional Court’s control functions and those of the Supreme Court, which is charged with investigating allegations against sitting politicians, the constitution also establishes other institutions to control possible misconduct by the government. These include the ombudsman, the comptroller, and the inspector general (procurador), which has the power to impose disciplinary sanctions on any public servant and can also intervene in judicial procedures in order to defend human rights. Finally, the attorney general, who is in charge of investigations of all crimes, is independent from the government, even if the president has an important influence in his nomination.49

The institutional design implies a sophisticated system of checks and balances that has functioned more or less as intended. Nevertheless, the system is vulnerable to disruptions such as the weakening of checks and balances caused by Uribe’s initial reelection (see Accountability and Public Voice). Still, judicial independence survived, as conspicuously demonstrated by the convictions of government allies in the parapolitics process and the Constitutional Court ruling that forbade a potential second Uribe reelection, among other decisions. The necessary complement is that judicial decisions are generally complied with. That said, the extent of governmental implementation of the Constitutional Court’s prescriptive rulings, such as the decision mandating amelioration of IDP conditions, has been more limited.

In addition, the constitution’s failure to establish a clear hierarchy between the high courts has led to acute confrontations, labeled in the press as the “train crash,” in which the Constitutional Court has overturned Supreme Court and State Council decisions; the latter have, in turn, refused at times to follow Constitutional Court decisions. These quarrels have negatively affected the coherence and legitimacy of the Colombian judicial system, if not its independence.

This independence is accompanied, however, by the system’s profound and acute shortcomings in efficiently and fairly dealing with common citizens’ more routine conflicts. On balance, the results of the judiciary’s intervention in civil, administrative, and criminal matters remain deficient. For instance, a claim against the government to obtain reparations for an abuse takes an average of almost three years if the case remains in a district tribunal; it can take 10 more years if it goes, by appeal, before the State Council.50

The situation is somewhat better in criminal matters. In 2006, a comprehensive reform of the code of criminal procedure was promulgated in order to implement a more adversarial and oral system, which was supposed to enhance the efficiency of the criminal system, improve respect for due process, and increase legitimacy. Five years later, a general evaluation of the reform’s implementation concluded that there have been advances, including increased protection of defendants’ rights, thanks to improved oversight by independent judges of prosecutors’ work and better service offered by public defenders.51 Moreover, in some respects, efficiency increased: the average time for cases to arrive at the formal accusation stage decreased from 29 months to 4 months. Nevertheless, criminal investigation remains highly inefficient, and criminals not caught in the act are rarely formally accused. Thus, the level of impunity remains very high, even in crimes as serious as homicide. In 2008, for instance, there were convictions in only 2.7 percent of the homicides committed.52

In addition, judges and prosecutors still face threats and intimidation that undermine their capacity to independently decide criminal cases. Prosecutorial independence has often been questioned, but the attorney general, once confirmed, does not follow instructions from the
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government and cannot be removed from office by the president. The importance of the office was demonstrated in 2009 and 2010 by the stalemate between Uribe and the Supreme Court, which refused to confirm any of the three candidates proposed by the president. The Court considered them unsuitable for the job, but Uribe refused to change the list; only in October 2010, after President Santos had offered new nominees, did the Court select Vivian Morales to fill the post.

Although Colombia has maintained sufficient civilian control over the security forces to ensure the preservation of democracy, the military has enjoyed substantial autonomy, particularly in operational terms, which contributed to the previously noted problem of collusion with illegal armed groups. However, there have been advances in the investigation of human rights abuses. Following a 1997 Constitutional Court decision, investigative and prosecutorial responsibility for gross rights violations committed by the military or the police were mostly transferred from the military justice system to civilian courts. Several important convictions for rights abuses and collusion between military officers and criminal organizations have been achieved in recent years. For instance, two very prominent and high-ranking military officials, Colonel Alfonso Plazas Vega and General Jesús Arias Cabrales, were convicted, in June 2010 and April 2011, respectively, for the forced disappearances of civilians during a politically traumatic event, the 1985 siege of the Palace of Justice. However, these decisions were strongly criticized by retired officers’ organizations, key political and economic elites, and even by both Uribe and Santos, leading to proposals to return cases involving military officials to the military justice system. Although the proposal was shelved, the strength of criticism illustrated Colombia’s still-tenuous civilian oversight of the security forces.

The Colombian legal system recognizes private property, and courts generally protect it and guarantee respect for contracts. Nevertheless, the state has largely failed to secure property rights of the most vulnerable 10 percent of the population: the IDPs forced to flee their homes and leave their possessions behind. The dynamic behind this internal displacement is complex; in some cases it has been a side effect of the armed conflict, but in many other cases powerful economic actors, in collusion with the armed groups, stimulated the displacement in order to appropriate the land and initiate large-scale agriculture and mining activities. The result has been described as an “agrarian counter-reform,” and it has increased property inequality in rural areas. According to some estimates, the Gini coefficient for land went from an already high 0.70 in 1984 to an astronomical 0.87 by 2010.

ANTICORRUPTION AND TRANSPARENCY

Colombia features an array of legal instruments to combat corruption and to increase governmental transparency. For instance, all public servants must make sworn declarations of income and assets, and strict regulations forbid employees from contracting with relatives. Colombia has also approved and ratified international instruments such as the UN Convention against Corruption. In May 2011, Congress approved a new statute against corruption, which incorporates new tools to prevent and sanction illicit acts of corruption, including the use of covert agents to detect graft. A notable change is the partial modification of norms regulating government contracting processes; the flexibility of these regulations had facilitated serious acts of corruption in recent years.
In spite of these legal advances, there is consistent evidence that Colombia has a serious and pervasive corruption problem. This is reflected in Transparency International’s Corruption Perceptions Index, which in 2010 ranked the country 78 out of 178, with a score of just 3.5 out of 10.\(^{58}\) Conversely, significantly fewer Colombians than in many Latin American peers—10 percent or less—have reported paying petty bribes in recent surveys.\(^{59}\) The disparity between low reported petty corruption and higher general perceptions of graft likely stem from the reality of diminished petty corruption combined with well-publicized instances of grand corruption, especially scandals associated with government contracting and abuses of power.

One conspicuous example is the scandal associated with the Nule group; a conglomerate led by three cousins, Guido, Manuel, and Miguel Nule, which achieved rapid and enormous financial gains via lucrative contracts with both the national government and some local administrations. Presented for some time as successful and creative entrepreneurs, judicial and press investigations revealed that most of the Nule contracts were obtained by bribing politicians and public servants—and abetted by contacts with top political leaders, including President Uribe.\(^{60}\) The mayor of Bogotá, Samuel Moreno, was suspended in May 2011 pending investigation of his involvement after his brother, Senator Ívan Moreno, was indicted on corruption charges in April.\(^{61}\)

Another important scandal involved one of Uribe’s closest supporters, ex-Minister of Agriculture Andrés Felipe Arias, who was accused of diverting public monies from a fund, Secure Agricultural Income (Agro Ingreso Seguro, or AIS), designated to assist peasants and small farmers facing economic difficulties. In reality, according to press reports and judicial investigations, they were disbursed to rich families and powerful rural businessmen in order to build political support for Uribe’s possible reelection as well as Arias’s own presidential campaign.\(^{62}\) As of May 2011, Arias remained under formal investigation.

The capacity of the judicial system to investigate complex corruption cases has typically been very low. For instance, in 2007, the attorney general, which is the main institution in charge of uncovering and prosecuting corruption, received complaints of 1,246 possible cases of embezzlement of public funds but logged convictions in only 13 cases.\(^{63}\)

Since the transfer of power from Uribe to Santos, a series of corruption scandals has erupted, including both the AIS and Grupo Nule cases; some emerged from investigations stimulated by the new government, others from previous judicial investigations, and yet others out of complaints made by the press or opposition parties. The cases have given the impression that corruption worsened during Uribe’s two terms: one explanation suggests that the exacerbation of Colombian graft was linked to President Uribe’s efforts to retain power and to win a second reelection.\(^{64}\) However, it was clearly not the only relevant factor; other elements, such as the weakness of prosecutorial capacity, have played also an important role in the failure to limit corruption.

With respect to government transparency, some information is available through a 1985 law, but Colombia possesses no specific and comprehensive regulation of the right to access public information, and information about public servants is often difficult to citizens to access. An administrative code approved in January 2011, which partially regulates the subject, was a lost opportunity that replicated old regulations and did not reflect international access to information standards. The budget process also requires significant reform; although the 2010 Open Budget Index awarded Colombia an above-regional average score of 61 out of 100, it noted ongoing deficiencies in budget transparency, including weaknesses in legislative oversight of ongoing budget revisions. The report also noted that neither the Office of the Comptroller
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General nor the Office of the Auditor General produces published reports regarding auditing and oversight of the management of Colombian revenue and expenditures.\(^6\)

**RECOMMENDATIONS**

- Focus judicial reform efforts on increased efficiency, while ensuring that any reform preserves judicial independence—especially of the high courts—and strengthens the role of the civilian courts in the investigation of military and police abuses.

- In order to protect the electoral process from the persistence influence of criminal organizations, strengthen the electoral system and reinforce its independence from political parties by providing the electoral authorities greater power to access party accounts and sanction noncompliant parties.

- Prioritize the transparency of government activities, including the enactment of more comprehensive transparency legislation and the implementation of open, modernized government contracting processes.

- The government must act to diminish the extreme inequality that persists in Colombia. A critical measure will be the articulation of effective procedures to implement the Victims’ Law, particularly the restitution of land to IDPs and the protection of citizens advocating on behalf of marginalized ethnic and economic groups.

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\(^1\) These data are from the National Department of Planning. See Departamento Nacional de Planeación, *Bases del Plan Nacional de Desarrollo. Prosperidad para todos* (Bogotá: Departamento Nacional de Planeación, 2011), 13.

\(^2\) There have been important discussions to define the nature of Colombian armed conflict, which has become a nameless conflict, according to the title of an important collection of writings on the subject. See Francisco Gutierrez, ed., *Nuestra Guerra sin nombre* (Bogotá: Norma, IEPRI, 2006).


\(^5\) For an explanation of the regulations about the financial support to parties, political movements, and electoral campaigns, see the documents of the Misión de Observación Electoral (MOE) in www.moe.org.co. See, especially, the document *Financiamiento electoral en Colombia* (Bogotá: MOE, 2010), www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf, accessed February 2011.


The data were given directly from the Corporación Nuevo Arco Iris to the author in July 2011.


See the public pronouncement expressing this fear by FLIP, a well known NGO that groups important journalists to protect freedom of speech: “Periodistas frente a procesos judiciales,” FLIP, August 25, 2008, www.flip.org.co/alert_display/0/408.html.


See the Flip database of the violence against journalists in www.flip.org.co/murder_list.html, accessed September 12, 2011. See also FLIP, El olvido de la justicia, p 12.

FLIP, El olvido de la justicia, p 48.


For an evaluation of this Constitutional Court’s intervention, see the documents of the Comisión de Seguimiento del Desplazamiento (a group of several NGOs that permanently monitors this policy) in the following link: www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52, accessed September 12, 2011. For an academic discussion of this judicial intervention, see César Rodríguez and Diana Rodríguez, Corte Constitucional y cambio social. Como la Corte Constitucional transformó el desplazamiento forzado en Colombia (Bogotá: Dejusticia, 2010), www.dejusticia.org/interna.php?id_tipo_publicacion=5&id_publicacion=781.

For this discussion see Francisco Gutierrez, ed., Nuestra Guerra sin nombre.

For a general overview of the human rights situation in Colombia in the past few decades, see the different reports of Human Rights Watch, Amnesty International, the Inter-American Commission on Human Rights, the UN Office of High Commissioner of Human Rights in Colombia (OHCHR), and the Colombian Commission of Jurists.

For a general evaluation of the internal displacement situation in Colombia, see the different documents of CODHES, available at www.codhes.org, accessed September 12, 2011. In particular, see “¿Consolidación de que?,” Boletín Informativo, in CODHES 75 (February 2011), www.codhes.org/images/stories/pdf/bolet%C3%ADn%2077.pdf.


See Alexandra Guaqueta and Gerson Arias, “Impactos de los programas de desmovilización y reinserción sobre la sostenibilidad de la paz,” in Elvira María Restrepo and Bruce Bagley, eds., La desmovilización de los paramilitares en Colombia: entre el escepticismo y la esperanza (Bogotá: Uniandes, 2011), 515–517.

According to Melo’s data, the homicide rate diminished from 69 to 39 per 100,000 persons between 2002 and 2006. See Jorge Orlando Melo, “Cincuenta años de homicidios: tendencias y perspectivas.”

For a general overview of these new criminal bands or “bacrim” and their nature and activities, see Mauricio Romero and Angela Arias Ortis, “Bandas criminales, seguridad democrática y corrupción,” in Arcanos, no. 14, 40–52. The data on the possible members of these criminal groups come from this article. See also Inter-American Commission on Human Rights (IAHRC), chap. 4 in Annual Report 2010 (2011), http://www.cidh.oas.org/annualrep/2010eng/TOC.htm, accessed September 12, 2011.


33 According to “¿Consolidación de que?,” CODHES, p. 11, during the eight years of President Uribe’s governments, about 2.6 million persons were displaced.
39 All these data are from Escuela Nacional Sindical (ENS, 2009), Cuaderno de Derechos Humanos No 21. Medellín, and ENS, Cuaderno de Derechos Humanos No 22 (Medellín: ENS, 2010).
40 The level of unionization has been always low; nevertheless, it went down from 12% in 1980 to 5% in 2002. See Miguel Eduardo Cárdenas, “Treinta años de sindicalismo en Colombia: vicisitudes de una transformación,” in Francisco Leal Buitrago, En la encrucijada. Colombia en el Siglo XXI (Bogotá: Norma, 2006), 255.
48 Ibid., par 44.
49 The attorney general is nominated by the Supreme Court for four years from a list of three candidates provided by the president. Thus the president has an important influence on the attorney general’s selection. But once nominated, the attorney general does not follow instructions from the government and cannot be removed from office by the president. The nomination of the last attorney general was very controversial because the Supreme Court refused to select any of the candidates proposed by President Uribe in September 2009 as the Court considered them not suitable for the job. President Uribe refused to change the list, so for almost a year, it was not possible to select a new attorney general. Only in October 2010, after the new President Santos decided to change the list, did the Court select Ms Vivian Morales as the new attorney general.


51 See Corporación Excelencia en la Justicia (CEJ), Balance de los primeros cinco años de funcionamiento del sistema penal acusatorio (Bogotá: CEJ, 2011), 255–262.
53 See Corte Constitucional, Sentencia C-358/97.
54 In November 1995 a guerrilla commando took control of the Supreme Court building and took hostage of the justices of the Supreme Court. The retaking of the building by the army was violent: about 100 people died, including 12 justices, and 11 persons were forcibly expelled. General Arias Cabrales was the officer in command of the military operation.


56 See Ley 970 dof 2005 and Corte Constitucional, Sentencia C-172/06.


