

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

CIVIL SOCIETY REPORT

on the implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN COLOMBIA

by Transparencia por Colombia

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Every effort has been made to verify the accuracy of the information contained in this report. It should be noted that the information gathering process for this report culminated on November 1, 2021; therefore, subsequent actions are not reflected in this document.

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Corporación Transparencia por Colombia (TPC), Transparency International's national chapter, was founded in 1998 as a response from Colombian civil society to a complex political scenario, due to the impact of corruption on public institutions and the weakening of democracy. Since then, TPC has led civil society in the fight against corruption and for transparency, both in the public and private spheres, to promote active citizenship, strengthen institutions and consolidate our democracy.

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Abbreviations

While the abbreviations are provided in both Spanish and English in the following table, they are used in their original Spanish version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Spanish	English
AECID	Agencia Española de Cooperación Internacional para el Desarrollo	Spanish Agency for International Development Cooperation
CJS	Consejo Superior de la Judicatura	Superior Council of the Judiciary
CNE	Consejo Nacional Electoral	National Electoral Council
CNCLCC	Comisión Nacional Ciudadana de Lucha Contra la Corrupción	National Citizen Commission for the Fight Against Corruption
CNM	Comisión Nacional de Moralización	National Moralization Commission
CNSC	Comisión Nacional del Servicio Civil	National Civil Service Commission
CRM	Comisiones Regionales de Moralización	Regional Moralization Commissions
CSO	Civil Society Organization	
DAFP	Departamento Administrativo de la Función Pública	Administrative Department of the Civil Service
DIAN	Dirección de Impuestos y Aduanas Nacionales	National Tax and Customs Directorate
EITI	Extractive Industries Transparency Initiative	
FATF	Financial Action Task Force	
FGN	Fiscalía General de la Nación	Prosecutor General's Office
GAFILAT	Grupo de Acción Financiera de Latinoamérica	Latin American Financial Action Task Force
ITRC	Agencia del Inspector General de Tributos, Rentas y Contribuciones Parafiscales	Agency of the Inspector General of Taxes, Revenues and Parafiscal Collections
MINTIC	Ministerio de Tecnologías de la Información y las Comunicaciones	Ministry of Information and Communication Technologies
MOE	Misión de Observación Electoral	Electoral Observation Mission
OECD	Organization for Economic Cooperation and Development	
OGP	Open Government Partnership	
PACO	Portal Anticorrupción de Colombia	Colombia Anti-Corruption Portal
POLFA	Policía Fiscal y Aduanera	Tax and Customs Police

RITA	Red Interinstitucional de Transparencia y Anticorrupción	Interinstitutional Network for Transparency and Anticorruption
SIREL	Sistema de Reporte en Línea	Online Reporting System
SECOP	Servicio Electrónico de Contratación Pública	Electronic Public Procurement Service
ST	Secretaría de Transparencia	Secretariat of Transparency
STR	Suspicious Transaction Reports	
TAIP	Transparencia y del Derecho de Acceso a la Información Pública	Transparency and the Right to Access to Public Information
TPC	Transparencia por Colombia	Transparency for Colombia
UIAF	Unidad de Información y Análisis Financiero	Information and Financial Analysis Unit
UNCAC	United Nations Conventions Against Corruption	
UNODC	United Nations Office of Drugs and Crime	

List of Persons Consulted

Institution	Name of person consulted	Position of the person consulted	Date
Judicial Documentation Center (CENDOJ)	Paola Zuluaga Montaña	Director	14/07/2021
Dejusticia	Juan Carlos Upegui	Director of Research in Technology and Human Rights	05/08/2021
National Department of Statistics (DANE)	Mónica García Lida Martinez	Specialized Professional Advisor	12/07/2021
Administrative Department of the Civil Service	Liliana Caballero	Independent Expert, Former Director of the Administrative Department (2014-2018).	20/05/2021
FUNCTION	Carolina Calderon Juan Sebastian Bustos	Professional Director of the Transparency Observatory	22/07/2021
Global Financial Integrity	Julia Yansura	Program Manager, Latin America & The Caribbean	04/06/2021
Secretariat of Transparency	Emanuel Puerto Claudia Gaviria	Advisor Area Professional	17/06/2021
Financial Superintendency of Colombia	Cesar Reyes	Deputy Superintendent - Anti-Money Laundering and Terrorist Financing Risk Office	07/07/2021
Attorney General's Office	Written request for information		12/07/2021
Financial Intelligence and Analysis Unit (UIAF)	Written request for information		15/04/2021

1. Introduction

Colombia signed the United Nations Convention against Corruption (UNCAC) on December 10, 2003 and ratified it on October 27, 2006¹. This report examines Colombia's implementation of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC and is intended as a contribution to the UNCAC implementation review process that is currently underway and covers these two chapters. It also compiles, from a citizen's perspective, the positive aspects and those requiring improvement with respect to the measures taken to mitigate corruption by the national government.

The UNCAC Implementation Review Group selected Colombia by a drawing of lots for its review in the fourth year of the second cycle. However, it is not known at what stage of the review the country is at right now as the Colombian state has not shared this information. A draft of this shadow report will be provided to the Colombian government once it is published.

In recent years, Colombia has made significant efforts to fight corruption at the regulatory level. It has developed instruments to improve the administrative measures of public entities, strengthen access to information, promote citizen participation, combat bribery and smuggling, and has promoted anti-corruption strategies such as the Comprehensive Public Anti-Corruption Policy (PPIA) in force between 2013 and 2018.

Colombia has also participated in international initiatives to promote transparency such as the Open Government Partnership (OGP), the Extractive Industries Transparency Initiative (EITI) and the OECD Network on Open and Innovative Government for Latin America and the Caribbean.

At the territorial level, efforts have also been made to implement Anticorruption and Citizen Service Plans (PAAC), adapt institutional management systems to the Integrated Planning and Management Model, which include transparency standards, and design some initiatives to fight corruption at the local government level.

Nevertheless, anti-corruption efforts have been insufficient. The Corruption Perceptions Index 2020 conducted by Transparency International, which analyzes 180 countries according to the perceived levels of corruption in the public sector, ranks Colombia in 92nd place with 39 points out of 100². Additionally, among the 37 countries that are part of the Organization for Economic Cooperation and Development (OECD), Colombia ranks second to last among the most corrupt, surpassed only by Mexico.

¹ UNODC. 2021. *Signature and Ratification Status*. Retrieved from United Nations Office on Drugs and Crime Web site: <https://www.unodc.org/unodc/en/corruption/ratification-status.html>. Accessed: August 13, 2021.

² Transparency International. (2021). *Corruption Perception Index 2020*. Retrieved from Transparency International website: <https://www.transparency.org/en/cpi/2020/index/col>. Accessed: August 13, 2021.

For its part, the May 2021 Gallup poll indicates that 24% of Colombians believe that corruption is the biggest problem they face, even above problems such as public order, security and the Coronavirus pandemic³.

The stagnation in perception ratings and the social recognition of corruption as a relevant problem indicate the need to make greater efforts that lead to tangible changes in public management and generate greater trust and legitimacy among citizens.

This report is based on the review of Colombian regulations and the implementation in practice of anti-corruption actions, according to the topics highlighted in Chapters II and V of the United Nations Convention Against Corruption (UNCAC), which are fundamental to achieve real changes in society and the Colombian State. Topics reviewed include public sector employment, political financing, whistleblower mechanisms and whistleblower protection, access to public information, judiciary and prosecution, prevention of money laundering, and asset recovery.

1.1 Scope

The UNCAC articles and topics developed in this report are:

Chapter II:

- Preventive anti-corruption policies and practices (Article 5),
- Preventive anti-corruption bodies (Article 6),
- Public sector employment (Article 7.1),
- Codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12),
- Reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2),
- Political financing (Article 7.3),
- Public procurement (Article 9.1),
- Management of public finances (Article 9),
- Judiciary and Public Prosecutor's Office (Article 11),
- Private sector transparency (Article 12),
- Access to information and participation of society (Articles 10 and 13.1), and

Chapter V:

- Anti-money laundering (Articles 14⁴, 52 and 58)
- Measures for direct recovery of property and confiscation tools (Articles 53, 54 and 56),
- International cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59).

³ Gallup & Invamer. (2021). Gallup-Invamer poll. Retrieved from <https://www.valoraanalitik.com/wp-content/uploads/2021/05/2021-05-Invamer-Poll.pdf>. Accessed: August 16, 2021.

⁴ Although this article is part of Chapter 2 of the Convention, given the similarity of the issues to be addressed, it is placed in this section.

1.2 Structure

The report consists of the following five sections: (i) an executive summary, which includes the main results, conclusions and recommendations, (ii) findings on the UNCAC review mechanism in Colombia, (iii) description of the findings on UNCAC implementation, (iv) description of recent developments in the areas covered in this report, and finally, (v) recommendations for priority actions to improve UNCAC implementation.

1.3 Methodology

The report was prepared by Transparencia por Colombia with technical and financial support from the UNCAC Coalition, using guidelines and a reporting template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist used by governments to report progress in UNCAC implementation. The report template included a set of questions on the review process and, in the section on implementation, asked for examples of good practices and areas for improvement in the UNCAC Chapter II articles on prevention and Chapter V on asset recovery.

The supporting information for this report consisted of a review of Colombian legislation, and research documents on the topics evaluated. Likewise, interviews were conducted with experts on the subject, public officials, and the authors of the report made use requests for information under Article 24 of Law 1712 of 2014⁵. Additionally, documents and reports made by different CSOs, State entities and international organizations were used.

As mentioned below in the assessment of the UNCAC provisions, there continues to be a lack of public information on institutional webpages, which makes it difficult to find relevant information for the preparation of the report, including the fact that the statistics and figures necessary to provide a solid basis for the report's requirements have not been provided by the competent entities.

⁵ "Every person has the right to request and receive information from any obligated subject, in the form and conditions established by this law and the Constitution." Retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=56882>.

2. Executive summary

This report examines Colombia's implementation of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC) and is intended as a contribution to the UNCAC implementation review process that is currently underway and covers these two chapters.

At the time of preparation of the report, it was not possible to obtain information on the UNCAC review process in Colombia. Inquiries were made to the Transparency Secretariat of the Presidency of the Republic, without obtaining a clear response on the status of the process.

Availability of information

The supporting information for this report consisted of a review of Colombian legislation and research documents on the topics evaluated. Only little information is published proactively in relation to the implementation of policies and regulations, compliance with indicators, existing challenges, as well as information on investigation processes, sanctions, seized assets and the results of international judicial cooperation exercises.

To supplement the information required for this report, Transparencia por Colombia sent several requests for information to public entities under Article 24 of Law 1712 of 2014 (not all were answered⁶), conducted interviews, reviewed press releases, academic articles and previously conducted research.

Implementation in law and practice

In general, Colombia has a comprehensive constitutional, legal and regulatory framework that addresses many of the aspects addressed in Chapters II and V of the Convention. However, as mentioned later in the report, there are still pending issues to be legislated, such as measures for the protection of whistleblowers, criminal liability of legal persons for acts of corruption, reparations for damages caused by corruption, and reforms to public contracting and employment.

In terms of **preventive anti-corruption policies and practices**, Colombia has an Anti-Corruption Statute and a Comprehensive Anti-Corruption Public Policy that was in force until 2018. A new policy entitled "Transparency, Integrity, Legality, Co-responsibility, and Innovation Policy: Towards an Open State" and the "Strategy to Combat Corruption Associated with Drug Trafficking" are currently being drafted. However, beyond the existence of such policies, it is important that they generate real changes. Usually, the

⁶ The Attorney General's Office did not respond to the request for information with file number SGD - No: 20216170349842 dated April 15, 2021 nor to the request for information with file number SGD - No: 20216170564572 dated June 28, 2021.

compliance indicators included in these documents are high because they refer to process aspects, but it is not possible to clearly identify the impact of these policies.

In relation to the **preventive anti-corruption bodies** in Colombia, there is the Secretariat of Transparency, which is the entity in charge of leading the anti-corruption actions in the country. However, the entity requires greater capacity to improve the coordination of actions and make its work more dynamic.

With respect to **public sector employment**, there are laws that regulate the administrative career and merit; however, these have been difficult to apply because the competitions tend to be slow and there are budgetary limitations that hinder the ability to hire and maintain administrative career personnel in the institutions. Other weaknesses in public employment are the arbitrary recurrence in direct hiring of personnel under the provision of services, the lack of possibilities for promotion to managerial positions and the high staff turnover rate in the institutions.

Other challenges of public sector employment are: i) the definition of clear guidelines for public servants in situations in which their ethics may be affected, beyond the promotion of values; and ii) ensuring that the declarations of conflicts of interest and of assets and income (which must be published in accordance with the law) are useful in the fight against corruption, since measures are required to effectively monitor the declarations of assets and income of public servants and to effectively deal with conflicts of interest that may be evidenced.

In addition, work must continue on the implementation of the National Integrity System, which seeks to implement ethical standards in public employment, and to ensure that beyond the promotion of values, it is possible to provide clear guidance to public servants on how to proceed in situations where ethical dilemmas or conflicts arise.

Political financing is of mixed origin, both public and private. Colombia has laws and regulations governing campaign financing ceilings, donation limits for private parties to avoid being disqualified from contracting with the elected president, rules on the lawful origin of resources and measures for accountability of candidates, political parties and movements. There are several challenges related to the application of the law, such as delays and difficulties in accessing public financing, the context of drug trafficking and criminality that permeates political campaigns, difficulties in monitoring the origin of resources, and the absence of mechanisms for reporting donations to political campaigns by private parties.

Regarding **reporting mechanisms and whistleblower protection**, Colombia has no regulations on whistleblower protection in place. Recently, two bills on this topic were presented but were unsuccessful in Congress. Although there are channels for reporting acts of corruption, it is necessary to guarantee basic elements for reporting, such as

confidentiality of data, anonymity, security of the reporting parties and follow-up of the reports.

With respect to **public procurement**, Colombia has broad legislation that regulates the purchases made by the State; however, this legislation facilitates, and even promotes, the arbitrary use of direct contracting through legal concepts such as the provision of professional services, special regimes or manifest urgency. It is necessary to unify the regulations and regulate the conditions for access to direct contracting more strictly.

Regarding **the management of public finances**, the country has legislation that determines how public resources will be used and entities in charge of the respective follow-up. Although Colombia has an Economic Transparency Portal with general information on budgets, there are significant challenges in terms of access to information, as there is no unified budget information system, detailed information on the use of public resources is not published, nor is information on budget collection or tax benefits granted to private parties.

Regarding **access to public information** in Colombia, Law 1712 of 2014 gives the right the category of "fundamental" and has achieved institutional and cultural changes regarding its guarantee. The biggest challenges that remain are the accessibility of information to different social sectors, a greater presence of the oversight body in terms of promoting the law and defining and imposing sanctions for non-compliance; and the application of the law to obligated subjects other than public entities, such as political parties, private companies, foundations and other subjects that use public resources.

Civil society participation in Colombia is regulated both constitutionally and legally. Progress has been made in defining mechanisms and instances for citizen participation. However, it is still necessary to work on greater openness from the institutional framework to participation and on guaranteeing security conditions for participation, since more than 480 leaders have been assassinated since the signing of the peace agreement in 2016. Civil society organizations have not been consulted in the current review process reviewing Chapters II and V of the UNCAC, nor has information on the current status of the review been shared with Transparencia por Colombia.

In reference to the **independence of the judiciary and the Prosecutor General's Office**, in May 2020, the conflict of interest due to the friendship between the President of the Republic and the Prosecutor General of the Nation became evident. This conflict of interest has been evidenced by the citizenship; however, institutions have not acted upon it. There have also been corruption scandals associated with the manipulation of judicial processes by magistrates of the Republic to favor the interests of third parties. The greatest challenges in this regard persist in the modification of the manner in which the Attorney General is appointed, the updating and application of ethical guidelines, the definition of regulations to deal with existing conflicts of interest, the incorporation of transparency, accountability

and anti-corruption measures, and the implementation of whistleblower and whistleblower protection mechanisms in the judicial branch.

Regarding **private sector transparency**, there are no clear regulations for the application of the Transparency Law in private companies that manage or intermediate public resources, nor are there any regulations for the establishment of protection measures for those reporting acts of corruption in the private sector.

Regarding actions to **combat money laundering** in Colombia, there is broad regulation in this regard and several responsible entities. However, due to the Colombian context, where there is a high prevalence of criminal activities such as drug trafficking, illegal mining, wildlife trafficking and timber trafficking, institutional efforts fall short. The most important challenges have to do with the recognition and alignment of anti-money laundering actions to the corruption risks associated with this activity according to the methodological recommendations of the Financial Action Task Force of Latin America (GAFILAT), the establishment of more rigid control measures at customs posts, and the general strengthening of anti-money laundering actions that usually refinance criminal activity or facilitate corruption.

In terms of **measures for direct recovery of property and confiscation tools**, Colombia's extensive legislation regulates asset forfeiture procedures in accordance with constitutional principles and the right to private property. However, these processes tend to be slow due to high judicial congestion, and there is no published information on seized assets, the status of seizure processes, and the destination of seized assets.

Regarding **international cooperation for confiscation purposes**, Colombia is part of numerous multilateral instances, and party to several international treaties for the management of assets and internal regulations that regulate the subject; and for this reason, the normative dispersion is high. There is also no publicly available information on the status of the processes or results of international judicial cooperation exercises.

The following table presents a summary of the implementation and enforcement of Chapter II and Chapter V, which are presented in scales provided by the UNCAC Coalition:

- The status of implementation of the law is rated as follows: fully implemented, largely implemented, partially implemented and not implemented.
- The status of implementation and enforcement in practice is rated as follows: good, moderate and poor.

Table 1: Summary of implementation and enforcement of Chapter II and Chapter V

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
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Art. 5 - Preventive anti-corruption policies and practices	Partially implemented	Moderate
Article 6 - Preventive anti-corruption body or bodies	Partially implemented	Moderate
Art. 7.1 – Public sector employment	Partially implemented	Poor
Art. 7.3 - Political financing	Largely implemented	Moderate
Art. 7, 8 and 12 - Codes of conduct, conflicts of interest and asset declarations	Largely implemented	Moderate
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Partially implemented	Poor
Art. 9.1 - Public procurement	Largely implemented	Moderate
Art. 9.2 - Management of public finances	Partially implemented	Moderate
Art. 10 and 13.1 - Access to information and participation of society	Largely implemented	Moderate
Art. 11 - Judiciary and prosecution services	Partially implemented	Poor
Art. 12 - Private sector transparency	Partially implemented	Poor
Art. 14, 52 and 58 - Anti-Money Laundering	Partially implemented	Moderate
Art. 53 and 56 - Measures for direct recovery of property	Partially implemented	Poor
Art. 54 - Confiscation tools	Partially implemented	Poor
Art. 51, 54, 55, 56 and 59 - International cooperation for purposes of confiscation	Partially implemented	Moderate

The following table presents the performance in relation to the responsibilities covered by the report, which is rated on the following scale: Good, Moderate and Poor, giving a brief comment on the results.

Table 2: Performance of the main selected institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
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National Public Procurement Agency	Good	It has developed the Electronic Public Procurement System (SECOP) as a tool to publicize the country's procurement processes.
National Civil Service Commission	Moderate	Seeks to apply standards of merit and equality in the development of public employment. However, it requires greater capacity and coordination with the Administrative Department of the Civil Service.
Administrative Department of the Civil Service	Moderate	The entity has made progress in promoting transparency standards in public employment. Among them, the publication of resumes, declarations of conflicts of interest and declarations of assets and income in the SIGEP application. However, there are still challenges in terms of updating information, publication in open formats and interoperability in the management of information with other entities.
Prosecutor General's Office of the Nation in its Asset Recovery Role	Moderate	Although there is a legal framework for action by the Prosecutor General's Office for the recovery of assets, the processes are not always concluded satisfactorily.
Attorney General's Office of the Nation in its role as Guarantor of the Law	Poor	Greater efforts are required to promote and guarantee the right of access to public information, as well as to sanction non-compliance with the access to information law.
Secretariat of Transparency	Moderate	The entity reports directly to the Administrative Department of the Presidency of the Republic. It requires greater resources, capacity and scope for the development of its activities.
Superintendency of Finance	Good	There are clear procedures for the development of banking activities, handling of suspicious transactions and banking secrecy.

Recommendations for priority actions

1. Corruption prevention policies and practices:
 - The National Government should promote the legislation of issues related to the fight against corruption such as the protection of corruption whistleblowers, the criminal liability of legal entities for acts of corruption and the reparation of damages caused by corruption.
2. Corruption prevention body or bodies:
 - Legally reform the anti-corruption bodies created by the Anti-Corruption Statute, in order to provide them with a fixed budget (especially the National Citizen Commission for the Fight against Corruption) in order to make their work more dynamic and establish accountability obligations and access to information on their activities.
 - Strengthen the technical, administrative and budgetary capacities of the Secretariat of Transparency in its role as coordinator of public policies to fight corruption.
3. Public sector employment:
 - Carry out a general reform of public employment that promotes efficient and merit-based entry into public service, allows for corrective measures to be taken with respect to administrative career employees who have unsatisfactory performance, promotes labor mobility and provides incentives to public servants to improve the conditions of the people working in the public sector.
4. Political financing:
 - Promote legislation that obliges political campaign contributors to register their donations, loans or any other type of contribution to parties, movements and candidates. (This report must be interoperable with the *Cuentas Claras* application for reporting political campaign income and expenses).
 - Strengthen the processes of prevention and detection of illicit money in political campaigns, through regulations on donations from recently created legal entities, the understanding, prevention and prosecution of electoral crime as contemplated in the Electoral Criminal Policy and the promotion of public scrutiny of the exercise of the vote.
5. Codes of conduct, conflicts of interest and asset declarations:
 - Define regulations for the implementation of the National Integrity System, Law 2016 of 2020.
 - Improve the procedures for collecting information and publishing resumes, declarations of conflict of interest and declarations of assets and income, so that the databases for public consultation can be reusable, processable and interoperable.
6. Information and protection mechanisms for whistleblowers:
 - Create a unified information system that provides security and confidentiality guarantees to those reporting acts of corruption within the framework of the Institutional Anticorruption Network (RITA).

- Create mechanisms to follow up on the status of corruption complaints filed through RITA and other control and investigation entities.
 - Provide support and awareness mechanisms to citizens and public servants on the technical and evidentiary requirements of complaints to facilitate investigation and sanction exercises.
7. Public procurement:
 - Promote changes in the contractual regulations in order to unify the country's contracting legislation; regulate the arbitrary use of direct contracting and contracting by special regime.
 8. Management of public finances:
 - Strengthen the Economic Transparency Portal by including detailed budget information for each of the public entities, as well as information on tax collections and benefits granted to private companies.
 9. Access to public information:
 - Establish a sanctions regime for non-compliance with the law on access to public information.
 - Define methods and procedures for non-traditional regulated entities for the publication of the information described in Law 1712 of 2014.
 10. Judiciary and prosecution services:
 - Promote a modification to the selection process of the Prosecutor General of the Nation, eliminating the shortlist given by the President of the Republic, as this may promote possible conflicts of interest between the Executive and the Judiciary.
 - Legally define mechanisms for processing conflicts of interest, especially between the executive branch and the judiciary.
 11. Private sector transparency:
 - Define methods and procedures for the private sector in order to comply with the requirements established in Law 1712 of 2014.
 12. Anti-money laundering:
 - Adjust the Anti-Money Laundering and Anti-Terrorist Financing supervision systems and tools to the risk-based approach, in accordance with GAFILAT recommendations, and especially take into account the risk of corruption.
 - Strengthen measures against laundering of assets and money laundering, especially in the context of the fight against drug trafficking, since these processes are used to refinance criminal activities and corruption.
 13. Measures for direct recovery of property and confiscation tools:
 - Strengthen the judicial investigation processes to expedite judgments on forfeiture of ownership.
 14. International cooperation for purposes of confiscation:

- Unify the norms, procedures, instruments and regulations of international treaties on international judicial cooperation to facilitate the application of the norms according to the requirements established by each country.

3. Assessment of the Colombian review process

Transparencia por Colombia made requests for information on the UNCAC review process to the Secretariat of Transparency of the Presidency of the Republic; however, there was no response on the review process. The Secretariat of Transparency consulted the Ministry of Foreign Affairs but did not receive a response.

Table 3: Transparency of the government and CSO participation in UNCAC review process

Did the government disclose information about the country focal point?	No
Was the review schedule published somewhere/publicly known?	No
Was civil society consulted in the preparation of the self-assessment checklist?	Unknown
Was the self-assessment list published online or provided to civil society?	No
Did the government agree to a country visit?	Unknown
Was a country visit undertaken?	Unknown
Was civil society invited to provide input to the official reviewers?	Unknown
Was the private sector invited to provide input to the official reviewers?	Unknown
Has the government committed to publishing the full country report?	Unknown

4. Assessment of Implementation of Chapter II and Chapter V Provisions

The following is a description of the regulations associated with Chapters II (Preventive Measures) and V (Asset Recovery) of the UNCAC and their respective implementation. Subsequently, in each paragraph, the positive aspects, good practices and deficiencies in the legislation, implementation or lack of regulations are presented.

4.1 Chapter II

4.1.1 Art. 5 – Preventive anti-corruption policies and practices

The Colombian State has a broad regulatory framework aimed at preventing and mitigating acts of corruption in public and private entities. In addition, the legislation seeks to ensure that civil society organizations and citizens in general can exercise control over public resources and public management. Nevertheless, the regulation and implementation of regulations requires further efforts.

Article 1 of the Political Constitution (1991)⁷ states that *"Colombia is a social State of law organized as a unitary, decentralized Republic, with autonomy of its territorial entities, democratic, participatory and pluralistic, founded on respect for human dignity, on the work and solidarity of the people that comprise it and on the prevalence of the general interest"*. This opening of the Constitutional Charter places special emphasis on the legal recognition of fundamental rights, including those of citizen participation⁸ and the prevalence of the general interest.

Article 270 of the Constitution states that *"The law shall organize the forms and systems of citizen participation that allow monitoring of public management at the various administrative levels and its results"*, as a measure to promote citizen participation and control.

Subsequently, other laws emerged, such as Law 136 of 1994⁹, which indicates the parameters to guide the conduct of public officials at the territorial level. This law includes measures to increase transparency, prevent and sanction misconduct in the exercise of their functions.

⁷ <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125>.

⁸ Citizen participation is regulated in Law 1757 (July 6, 2015). Whereby provisions are issued regarding the promotion and protection of the right to democratic participation:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65335>.

⁹ Whereby norms are issued to modernize the organization and operation of the municipalities:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=329>.

In 1995, the first Anti-Corruption Statute was drafted through Law 190¹⁰, which establishes basic measures for the recruitment of public servants, incentives for the improvement of their performance and declaration of their assets, amendments to the criminal code that are mainly related to crimes against the public administration that may be committed by public servants; as well as aspects related to the financial regime and control of public entities that sought to improve the monitoring and control of resources, measures related to citizen participation, the role of the press, and various other provisions.

Subsequently, in 1998, Decree 2405 was issued, which created the Presidential Program for Modernization, Efficiency, Transparency and the Fight against Corruption (PPLCC)¹¹. The objective of this program was to coordinate government initiatives with the projects of control bodies and civil society in the fight against corruption. In 2004, Colombia ratified the United Nations Convention Against Corruption (UNCAC), which provides for preventive measures, international cooperation and technical assistance, among other provisions, to fight corruption in the country.

In 2011, the Secretariat of Transparency (ST) was created as the entity in charge of designing and coordinating the implementation of anti-corruption policies¹². In the same year, Law 1474¹³ was approved as a new Anti-Corruption Statute, which did not repeal the previous one, but marked a milestone in the country, since it outlined administrative, criminal and disciplinary measures to fight corruption, and promoted key issues such as the regulation of lobbying, the creation of special agencies for the fight against corruption, institutional and educational policies, provisions to prevent corruption in procurement and measures on the fiscal control process.

Subsequently, in 2014, Law 1712¹⁴ was approved to regulate the right of Access to Public Information and the conditions to access such information. The law establishes the principle of transparency under which all information held by the regulated entities, as defined in this law, is presumed to be public. Therefore, they have the duty to provide and facilitate access to such information in the broadest possible terms. The law also contemplates exceptions such as national security, privacy and commercial secrecy.

¹⁰ Law 190. Whereby rules are issued to preserve morality in the Public Administration and provisions are established in order to eradicate administrative corruption:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=321>.

¹¹ Decree 2405. Whereby the Presidential Advisor's Office for Public Administration is transformed into the Presidential Program to Fight Corruption in the Administrative Department of the Presidency of the Republic: <http://www.suin-juriscol.gov.co/viewDocument.asp?id=1768054>.

¹² Under decree number 4367, which will be discussed in greater depth in the review of article 6 of the UNCAC.

¹³ Law 1474. Whereby regulations are issued to strengthen the mechanisms for the prevention, investigation and punishment of acts of corruption and the effectiveness of public management control:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43292>.

¹⁴ Law 1712. Whereby the Law on Transparency and the Right of Access to National Public Information is created and other provisions are enacted:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=56882>.

This law meant a change with respect to the secrecy prevailing in the public administration and provided the possibility for citizens and social organizations to conduct more informed and robust social control with respect to government decisions. It is also a law that allows access to other fundamental rights such as health, education and citizen participation, since access to information facilitates this process.

However, there are some challenges related to the implementation of this Law, which are developed in Chapter 4 of this report. In 2015, Law 1757¹⁵ was approved, which promotes and protects the right to participate in political, administrative, economic, social and cultural life, and to control political power.

In terms of strengthening the management capacities of public entities, in 2017 the Integrated Planning and Management Model (MIPG) was consolidated,¹⁶ which seeks to standardize institutional management processes of the country's public entities in seven areas: human talent, strategic dimensioning, management with values for results, evaluation of results, information and communication, knowledge management, and internal control.

At the level of guidelines assumed by the current national government, in 2019 the National Development Plan¹⁷ was approved, which included a specific line on the subject entitled "*Alliance against corruption: zero tolerance for the corrupt*". This line stipulated the design of a Policy of Transparency, Integrity, Legality, Co-responsibility, and Innovation: "Towards an Open State"¹⁸ and the "Strategy to Fight Corruption Associated with Drug Trafficking".

Other laws have been passed recently, such as Law 2003 of 2019¹⁹, which obliges members of Congress to declare their conflicts of interest, Law 2013 of 2019²⁰, which regulates the publication of conflicts of interest and declarations of assets and income, Law 2014 of 2019²¹, which regulates sanctions for acts of administrative corruption, and Law 2022 of

¹⁵ Law 1757. Whereby provisions are issued regarding the promotion and protection of the right to democratic participation.

¹⁶ By Decree 1499 of 2017, By means of which Decree 1083 of 2015, Sole Regulatory Decree of the Civil Service Sector, is amended, in relation to the Management System established in Article 133 of Law 1753 of 2015: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=83433>.

¹⁷ Law 1955 of 2019, Whereby the national development plan 2018-2022 "pact for Colombia, pact for equity" is issued: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=93970>.

¹⁸ As of 2018 Colombia does not have an Anti-Corruption Policy in place.

¹⁹ Law 2003 of 2019. By which Law 5 of 1992 is partially amended and other provisions are enacted: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=102872>.

²⁰ Law 2013 of 2019. Whereby it seeks to ensure compliance with the principles of transparency and publicity through the publication of declarations of assets, income and registration of conflicts of interest: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=104572>.

²¹ Law 2014 of 2019. Whereby the sanctions for those convicted of corruption and crimes against public administration are regulated, as well as the unilateral administrative assignment of the contract for acts of corruption and other provisions: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=104573>.

2020,²² which legislates on the use of model specifications in public procurement, among others.

Complementary to the regulations, in 2013 the Comprehensive Public Anti-Corruption Policy (PPIA) was developed, which was in force until 2018. The main objective of this policy was to *"strengthen the tools and mechanisms for the prevention, investigation and sanction in the fight against corruption in the public and private spheres, with national and territorial incidence, in order to reduce the negative economic, social, political, legal and ethical effects derived from it, seeking to positively impact the human development of Colombians"*²³.

The last follow-up report on the indicators of this public policy was published in 2017²⁴, which reflects a compliance of more than 90% of the indicators associated with the policy objectives²⁵. In this report, the government highlights the increase of accountability and the creation of a merit-based competition system to fill jobs in territorial comptrollers' offices and the way comptrollers are elected. However, despite reporting high compliance in several policy goals, the impact has been reduced, especially on issues such as the regulation of lobbying, the protection of corruption whistleblowers, the optimization of the mining registry, and the effectiveness and efficiency in reporting possible acts of corruption, which still require regulation and implementation of an institutional framework with more robust measures.

In line with the above, there are still issues to be legislated, such as a framework for the protection of whistleblowers, criminal liability of legal entities for acts of corruption, reparations for damages caused by corruption, improvements to the country's public procurement processes, a structural reform of the public employment system, better methods for the selection of directors of control bodies, a system of sanctions for non-compliance with the Access to Information Law, among others.

The National Government is currently preparing a new CONPES document that will develop a Policy on Transparency, Access to Information and the Fight against Corruption²⁶.

²² Law 2022 of 2020. Whereby Article 4 of Law 1882 of 2018 is amended and other provisions are enacted: Law 2022. (July 22, 2020). Retrieved from por la cual modifica el artículo 4 de la ley 1882 de 2018 y se dictan otras disposiciones.: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=136375>.

²³ CONPES. (2013). CONPES 167. Retrieved from Estrategia Nacional de la Política Pública Integral Anticorrupción: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=83097>. Accessed: May 20, 2021.

²⁴ Secretariat of Transparency. (2017). *Progress indicator: Comprehensive Public Anti-Corruption Policy (PPIA)*. Retrieved from Observatorio Anticorrupción Website: <http://anticorrupcion.gov.co/medir/indicador-de-avance-politica-publica-integral-anticorrupcion>. Accessed: May 20, 2021.

²⁵ Many of the PPIA indicators do not respond to changes in particular contexts or situations, but are limited to processes such as training for public servants or publications, which do not necessarily have a real impact on the generation of changes in the fight against corruption.

²⁶ Secretariat of Transparency. (2021b). *Política de Transparencia, Acceso a la Información y Lucha Contra la Corrupción*. Retrieved from Transparency Secretariat Website: <http://www.secretariattransparencia.gov.co/politica-publica>. Accessed: July 28, 2021.

Regarding the implementation of anti-corruption regulations, each of the laws and decrees establishes the entities responsible for the regulation and leadership of the actions. Thus, in the implementation of anti-corruption measures there are different levels of responsibility set by the normative scheme and its consequent regulation.

In positive terms, it should be noted that Law 1712 on Access to Information has generated substantial changes in the country due to its definition as "fundamental", since according to the Colombian legal system, this type of right takes precedence over others, and includes protection mechanisms such as the tutela action that allows requests for information that were not answered by the entities to be reviewed by the judicial branch within 10 working days, which may force the entities to deliver the requested information²⁷.

In negative terms, not all citizens are aware of the anti-corruption legislation and the vast majority of citizens are unaware of the participatory institutional framework and consequently miss opportunities to get involved in collective decisions and citizen control²⁸.

Another challenge in the implementation of Colombia's anti-corruption legislation is the operationalization and coordination of the anti-corruption bodies created or regulated in the 2011 Anti-Corruption Statute. These instances are the Regional Commissions of Moralization (CRM), the National Commission of Moralization (CNM)²⁹ and the National Citizen Commission for the Fight against Corruption (CNCLCC). The latter, which is a formal space for citizens to contribute to the follow-up of policies, programs and actions formulated and implemented to fight corruption, has had funding difficulties and lack of capacity to perform the tasks assigned to it by law³⁰.

Good practices

- Colombia has a broad regulatory framework of laws to prevent corruption, including Law 1474 of 2011 on the prevention, investigation and punishment of acts of corruption and the effectiveness of public management control, Law 1712 on Transparency and Access to Public Information from 2014, Law 1757 of 2015 on citizen participation and Law 2013 of 2019 on the declaration of assets, income and registration of conflicts of interest.

²⁷ Law 1757. (July 6, 2015). Whereby provisions are issued regarding the promotion and protection of the right to democratic participation:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65335>.

²⁸ National Forum for Colombia. (2020). *What has happened to citizen participation in Colombia? 2003-2018 Volume 1*. P. 124. Retrieved from Foro Nacional por Colombia Website: <https://foro.org.co/wp-content/uploads/2020/02/Tomo1-Participacion-Ciudadana-El-entorno-de-la-participaci%C3%B3n.pdf>. Accessed: May 7, 2021.

²⁹ This Commission has been in existence since Law 190 of 1995.

³⁰ TPC. (2018). *Recommendations on transparency and anti-corruption for the national government 2018-2022*. Retrieved from Transparency for Colombia Website: <https://transparenciacolombia.org.co/wp-content/uploads/recomendaciones-medidas-anticorrupcion.pdf>. Accessed: May 17, 2021.

- There is a diversity of actors and issues involved in the country's anti-corruption regulatory framework. Among them are the Secretariat for Transparency, the Administrative Department of Public Service, the DNP, and investigation and sanctioning bodies, among others. The Secretariat of Transparency stands out in its role as coordinator of anti-corruption actions.
- A new "Policy on Transparency, Integrity, Legality, Co-responsibility, and Innovation: Towards an Open State" is being developed, which will contain strategies to improve access to public information, strengthen public management, promote social control, foster a culture of legality, and fight impunity.

Deficiencies

- A large part of the public is unaware of anti-corruption legislation and the participatory spaces that legally exist, which leads to a lack of citizen involvement in public affairs.
- There is still a lack of legislation related to whistleblower protection, criminal liability of legal entities for acts of corruption, reparations for damages caused by corruption, improvements to the country's public procurement processes, reform of the public employment system, better methods for selecting directors of control bodies, and a system of sanctions for non-compliance with Law 1712 on Access to Public Information, among others.
- Weaknesses in the bodies created by the Anti-Corruption Statute, CNM, CRM and CNLCC to comply with the legally-established obligations.
- There is no measurement of the relevance and real effect of anti-corruption regulations in Colombia.

4. 1.2 Art. 6 and 13.2 – Preventive anti-corruption body or bodies

Within the Colombian institutional order, the Secretariat of Transparency (ST) is the corruption prevention body that can comply with the terms stipulated in the article 6.1 of the UNCAC. This entity is regulated by Decree 4637 of 2011³¹ and is constituted under the dependence of the Presidency of the Republic.

According to this Decree, the functions of the ST include advising the President of the Republic in the formulation, design and implementation of public policies on transparency and the fight against corruption, as well as the creation of preventive tools to strengthen institutions in the areas of access to information, accountability and transparency.

³¹ Decree 4637 from 2011. Whereby a Secretariat is suppressed and created and a program is suppressed in the Administrative Department of the Presidency of the Republic and other provisions are issued: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=69296>.

Similarly, the ST is the executing body, which coordinates the different state entities in the implementation of the transparency and anti-corruption policy, proposes strategies and trains public officials in the promotion of a culture of probity and transparency.

Through the ST, the Transparency Observatory was created, which is in charge of preparing research studies and provides tools to analyze acts of corruption in conjunction with public and private entities, civil society organizations and citizens, in order to raise standards of integrity and transparency.

Recently, the ST has been developing new policies and tools to fight corruption. Among the policies to be highlighted are the "Policy of Transparency, Integrity, Legality, Co-responsibility, and Innovation: Towards an Open State"³² and the "Strategy to Combat Corruption Associated with Drug Trafficking"³³, which are currently being developed; and among the tools are the National Anti-Corruption Index (INAC), the Anti-Corruption Portal of Colombia (PACO) and the Inter-Institutional Transparency and Anti-Corruption Network (RITA).

Regarding the operation and financing of this entity, the budget of the ST is allocated through the General Budget of the Nation, which has an annual periodicity and includes operating expenses (personnel, general expenses) and investment (projects to implement the National Development Plan). In this sense, since it depends on the Presidency of the Republic, it does not have administrative or financial autonomy.

Although, as mentioned above, the ST is the leading body in the definition of corruption prevention actions, several of its actions have had a focus on assistance, awareness-raising and advice, rather than leadership in anti-corruption actions. This entity should prioritize its anti-corruption policy coordination role.

An indication of the need to strengthen the role of public policy coordination is that the anti-corruption actions of the National Government are dispersed. Of the 102 anti-corruption actions reviewed in the Second Follow-up Report on Public Action prepared by Transparencia por Colombia, the ST, nine ministries or administrative departments and other entities and agencies were found to be responsible³⁴, without taking into account the anti-corruption responsibilities of the territorial level entities.

In its internal functioning, the ST has some weaknesses, among which is its administrative and budgetary dependence on the Administrative Department of the Presidency of the

³² Since 2018 Colombia does not have an Anti-Corruption Policy in place. DNP. (2021). Policy on Transparency, Integrity, Legality, Co-responsibility, and Innovation: Towards an Open State. Preliminary unpublished consultation document. Accessed: July 28, 2021.

³³ This policy was scheduled to be carried out in 2017, however, there have been delays in its design.

³⁴ TPC. (2021e). *Second follow-up report on the national government's public action in anti-corruption matters*. Retrieved from Transparencia por Colombia website: <https://transparenciacolombia.org.co/wp-content/uploads/segundo-informe-de-seguimiento-de-la-accion-publica-del-gobierno-nacional-en-materia-anticorrupcion-2.pdf>. Accessed: May 20, 2021.

Republic. This situation goes against the recommendations made to the country by the OECD Integrity Study regarding the financial and budgetary autonomy of the ST to effectively exercise its functions³⁵.

With regard to recent developments in terms of policies and tools, it is important to mention that these are still in the definition or consolidation stages. In particular, it is necessary to pay attention to the parameters of security and effectiveness in the operationalization of the management of corruption reports through RITA, as there are currently no clear procedures for the protection of whistleblowers, clear guarantees of the confidentiality of information on reports or detailed follow-up mechanisms³⁶.

Good practices

- Colombia has a Secretariat of Transparency as the coordinating body for anti-corruption policy, which creates preventive mechanisms in the area of transparency and the fight against corruption for other public institutions.
- The Secretariat of Transparency is currently working on the development of new national anti-corruption strategies and tools to improve the management of information on corruption³⁷.

Deficiencies

- The Secretariat of Transparency, despite having qualified personnel to carry out its tasks, does not have the autonomy and sufficient capacity that a body that prevents corruption should have, because it depends administratively and budgetarily on the Presidency of the Republic.
- There is a lack of coordination of anti-corruption actions of the National Government under the leadership of the Secretariat of Transparency, and the ST lacks the capacity to support inter-institutional coordination mechanisms such as the National Commission of Moralization, of which the investigation and sanction bodies are part.
- A study by Transparencia por Colombia found that there is a dispersion of the National Government's anti-corruption actions, since not only the ST, but more than 10 ministries or administrative departments and other entities and agencies in total were found to be responsible for such actions.

³⁵ OECD. (2017). *OECD study on integrity in Colombia: Investing in public integrity to anchor peace and development*. P. 43. Retrieved from <https://doi.org/10.1787/9789264278646-es>. Accessed May 28, 2021.

³⁶ See TPC. (2021e). *Second follow-up report on the national government's public action in anti-corruption matters*.

³⁷ Throughout this document, mention is made of the anti-corruption strategies that the Secretariat of Transparency is working on, such as the Strategy to fight corruption associated with drug trafficking, the Policy on Transparency, Integrity, Legality, Co-responsibility, and Innovation: Towards an Open State and the Anti-Corruption Portal of the Government of Colombia.

4.1.3 Art. 7.1 and 7.2 – Public sector employment

Employment in the public sector is regulated by the Constitution, Law 909 of 2004³⁸ and other additional regulations. On the one hand, the Constitution includes provisions detailing the rights, duties, functions, rules and sanctions for public servants, and determines the functions of the two entities with the greatest responsibility in Colombia's public employment system: the National Civil Service Commission (CNSC), responsible for the administration and oversight of public servants' careers, and the Administrative Department of the Civil Service (DAFP), responsible for formulating and promoting policies and instruments for public employment, internal control and administrative organization.

On the other hand, Law 909 regulates the administrative career, the basic rules of public employment and the necessary requirements for hiring processes. This law is based on the constitutional principles of equality, merit, morality, efficiency, economy, impartiality, transparency, speed and publicity. However, there are still challenges for the consolidation of a modern and efficient public employment based on merit.

Decree 1083 of 2015³⁹ compiled the current regulations governing the Civil Service sector in order to have a single legal instrument for this purpose. This decree contains the functions, competencies and general requirements for public jobs at the different hierarchical levels of the agencies and entities of the national and territorial order.

Colombian regulations highlight merit as a determining factor for the selection of personnel and entry into public employment. It indicates that officials whose appointment system is not determined in the constitution must be made by public competition. An example of this is that for the election of executive positions, Article 1 of Decree 1972 of 2002 provides that the person is chosen from a shortlist of three persons compiled through an open public selection process which may be carried out directly by the public entity, or with public or private universities, or with private entities with expertise in personnel selection, or through cooperation agreements. Such selection processes shall take into account criteria of merit, capacity and experience for the performance of the job and shall at least include one or more tests to assess the knowledge or skills required for the performance of the job, an interview and an assessment of educational background and experience⁴⁰. Similarly, it indicates that admission to career positions and promotion therein must be made legally

³⁸ Law 909 of 2004. Whereby rules regulating public employment, administrative careers, public management and other provisions are issued:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=14861>.

³⁹ Decree 1083 of 2015. Whereby the Sole Regulatory Decree of the Civil Service Sector is issued:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=62866>.

⁴⁰ Decree 1972 of 2002. Repealed by Decree 1083 of 2015. Whereby the appointment of Regional or Section Directors or Managers or those who take their place, in the Public Establishments of the Executive Branch of the national order is regulated:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=5740>.

subject to prior compliance with the requirements and conditions established by law to determine the merits and quality of the applicants⁴¹.

To fight corruption in public employment, Title 21, Chapter 7 of Decree 1083 of 2015, proposes the implementation of an anti-corruption network composed of the Administrative Department of the Civil Service, the Secretariat of Transparency, the General Secretariat of the Presidency of the Republic and the Heads of Internal Control of public entities to articulate timely and effective actions in the identification of cases or risks of corruption in public institutions⁴². However, this network does not publish reports to the public on its findings, actions or results.

Despite the existence of regulations related to public employment, there are several difficulties in their implementation. Among them are the delay in the processes of selection and assignment of career public servants to the entities⁴³, the high cost of the selection processes, the complexity in the elaboration of the selection processes, the centralization of the determination of the size of the personnel plants in the CNSC, the delays in proposing and carrying out administrative reforms in the entities, and the budgetary limitations of the entities to hire personnel⁴⁴.

As a consequence, the entities usually opt for other methods to meet personnel needs, such as temporary public servants⁴⁵, the legal concept of assignment in which public servants are transferred from the entities to assume other functions, or contracting for the provision of services in which the selection conditions are usually determined by the entities without complying with standards of merit or objective selection.

In terms of access to information, the DAFP has designed the Public Employment Information and Management System (SIGEP)⁴⁶, which consolidates information on public servants and government contractors, as well as information on conflicts of interest and assets and income. This system has been important for the consultation of citizen

⁴¹ See Political Constitution (1991).

⁴² Civil Service. (2015). *Decreto 1083*. Retrieved from Por medio del cual se expide el Decreto Único Reglamentario del Sector de Función Pública: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=62866>. Accessed: August 3, 2021.

⁴³ The calls have a long time to develop, they are composed of 5 phases, call, recruitment, application of tests, formation of lists of eligible candidates and trial period, to carry out the first 4 phases it takes approximately 2 years in the whole process, while the trial period lasts 6 months, which greatly harms citizens who want to be part of the public selection processes, because the delay delegitimizes the reliability of the same and increases the uncertainty of becoming a public official based on the principle of transparency and merit.

⁴⁴ TPC. (2019c). *Recommendations to strengthen the fight against corruption in public employment*. Retrieved from Transparency for Colombia website: <https://transparenciacolombia.org.co/2019/06/19/recomendaciones-fortalecer-lucha-contra-corrupcion-empleo-publico/>. Accessed: August 3, 2021.

⁴⁵ Therefore, they do not go through all the requirements of the administrative career in Colombia.

⁴⁶ The SIGEP consultation link is as follows: <https://www.funcionpublica.gov.co/web/sigep/hojas-de-vida>. Access: August 3, 2021.

information; however, it still needs to be adapted to the open data standards established by the Ministry of Information Technologies and Communications (MINTIC)⁴⁷.

The modernization process of public employment has been slow and precarious. Some of the consequences are weak institutional management strategies, high salary gaps, arbitrary increase of contractors (which suggests that cronyism, clientelism and discretion in selection processes are favored)⁴⁸.

Good practices

- In spite of the difficulties in the implementation of public employment regulations, they recognize equality, merit, morality, efficiency, economy, impartiality, transparency, speed and publicity in the selection processes.
- The SIGEP is an information system that manages the information of public servants and can be consulted by the public.

Deficiencies

- The dynamics of the administrative career system in Colombia is slow and costly, which limits the availability of personnel chosen by merit for public entities.
- There are few positive incentives for the promotion of public servants within the institutions.
- Service provision contracts are commonly used to meet the entities' staffing needs. They do not have the same conditions of merit and objective selection and encourage arbitrary decision-making and clientelism.
- There are budgetary and administrative limitations to increase the number of personnel and therefore the number of merit-based selections.
- Weak coordination of efforts and functions between the DAFP and the CNSC to effectively manage public employment.

4.1.4 Art. 7.3 – Political financing

The Colombian State allows public and private financing⁴⁹ of political and electoral processes. Access to these resources must be given under compliance with a series of

⁴⁷ These requirements can be consulted at: https://gobiernodigital.mintic.gov.co/692/articles-160770_Requisitos_datos_abiertos.pdf.

⁴⁸ An example of this are the testimonies compiled in an article published by the newspaper El Espectador, which documents clientelism in service provision contracts. El Espectador. (2021). *Politiquería y acoso laboral: relatos de contratistas del Estado*. Retrieved from El Espectador newspaper website: <https://www.elespectador.com/politica/politiqueria-y-acoso-laboral-relatos-de-contratistas-del-estado-article/>. Accessed: August 2, 2021.

⁴⁹ This mixed financing model is not necessarily bad, but it generates several corruption risks, one of them is the lack of knowledge of the management of contributions and in some cases the opacity and loss of large sums of money. As well as the incidence of illegal economies and organized crime in the political campaigns,

requirements. In the case of public resources, most of them are delivered after the campaigns, under the legal concept of replacement of expenses for votes, a mechanism that prioritizes the access to these resources of those who have better results at the polls.

In relation to public financing, Article 109 of the Constitution mentions that the State must finance the political parties and movements with legal personality, as well as the campaigns carried out by them and by the significant groups of citizens that nominate candidates through the system of replenishment by deposited votes. The law determines the requirements and the percentage of votes needed to be eligible for such financing⁵⁰.

If the requirements are met⁵¹, the State financing is composed of an advance payment from the State, which includes a part for the financing of electoral advertising and another part for the financing of other campaign expenses, as regulated by the Law. The State distributes the budget appropriation for the financing of campaigns⁵² through the National Fund for Political Financing (ascribed to the CNE).

said which, regulating the access and use of resources for politics requires not only to facilitate political participation but also to avoid that the campaigns are captured by particular interests or illegal practices that corrupt and affect the way citizens are inserted within the political system. TPC. (2019b). *Elections & Contracts Report 2018-2019*. Retrieved from

<https://transparenciacolombia.org.co/Documentos/2019/EleccionesYContratos/EleccionesYContratos-2019.pdf>. Accessed June 15, 2021.

⁵⁰ The distribution of contributions is calculated according to the valid votes received, as long as the candidates or lists comply with the minimum percentage of votes (thresholds) required. In presidential elections, candidates must obtain a vote equal to or higher than 4% of the valid votes cast in order to be entitled to the reimbursement of expenses for votes under the maximum amount established by the National Electoral Council (CNE). During the campaign, candidates may request in advance an amount up to 10% of the expenditure ceiling in order to use them in the financing of electoral propaganda in accordance with Article 11, Law 996 of 2005. TPC et al. (2020). *Financiamiento de la Política, Apuntes desde una mirada regional, casos Argentina, Brasil y Colombia*. Retrieved from Transparencia por Colombia website: <https://transparenciacolombia.org.co/wp-content/uploads/estudio-regional-comparado-financiamiento-de-la-politica.pdf>. Accessed: June 14, 2021.

⁵¹ For example, Law 996 of 2005 establishes the financing parameters for the presidential elections in which it mentions that the candidate must be registered by a political party or movement with legal personality, or an alliance of these, that have obtained four percent (4%) of the votes in the Senate or an equal percentage of the votes in the House of Representatives added nationally or be registered by a social movement or significant group of citizens supported by a number of valid signatures equivalent to three percent (3%) of the total number of votes deposited in the previous elections to the Presidency of the Republic, certified by the National Registry of the Civil Status. Law 996. (2005). Whereby the election of the President of the Republic is regulated, pursuant to Article 152 (f) of the Political Constitution of Colombia, and in accordance with the provisions of Legislative Act 02 of 2004, and other provisions are enacted.

⁵² 1) 10% among all political parties or movements with legal status; 2) 15% among the parties that have obtained 3% or more of the total votes in the last election to the Senate of the Republic or the House of Representatives; 3). 40% in proportion to the number of seats obtained in the last election to the Congress of the Republic; 4). 15% in proportion to the number of seats obtained in the last election of Municipal Councils; 5). 10% in proportion to the number of seats obtained in the last Departmental Assemblies election; 6). 5% in proportion to the number of women elected in public corporations and; 7). 5% in proportion to the number of young people elected in public corporations (Law 1475, 2011. Article 17).

The regulations limit the ceiling of the expenses that parties, movements or candidates may incur in electoral campaigns, as well as the maximum number of private contributions⁵³. Parties, movements and candidates must render accounts on the volume, origin and destination of their campaign resources⁵⁴, a procedure that is done according to Resolution 3097 of 2013⁵⁵.

This accountability is public⁵⁶. Citizens can access this information through the citizen consultation module of the *Cuentas Claras* portal⁵⁷. Another way to access this information is through requests to the National Electoral Council (CNE)⁵⁸. In addition, it is the duty of political parties and movements to keep their affiliates permanently informed about their political, administrative and financial activities. In order to comply with this duty, they must render accounts every year.

Regarding the campaign financial statements, Article 17 of Law 996 mentions that those responsible for the rendering of accounts of the respective campaign shall keep the general ledger of balances, the columnar journal and at least one auxiliary ledger, which shall be registered before the Electoral Organization at the time of registration of the candidates. Similarly, they shall keep a list of the contributions, donations and credits, with the identification, address and telephone number of the natural persons who made the contribution or donation.

Law 1475 of 2011⁵⁹ establishes that political parties and movements must keep their affiliates informed about their political, administrative and financial activities, and for this reason they must annually render their respective accounts. For the execution of the

⁵³ Regarding the ceiling for contributions or donations, Article 14 of the law establishes that twenty percent (20%) of the ceiling of presidential campaign expenses are financed by individuals; however, presidential campaigns may not receive individual contributions or donations from individuals up to two percent (2%) of the amount set as the campaign ceiling. Contributions from candidates and their relatives up to the fourth degree of consanguinity, second degree of affinity or first civil degree may not exceed in aggregate four percent (4%) of the amount set as ceiling by the National Electoral Council. See Law 996 (2005).

⁵⁴ See Political Constitution (1991).

⁵⁵ *Resolution 3097 of 2013*. Establishing the mandatory use of the electronic tool, application software called "Cuentas Claras" (Clear Accounts) as the official mechanism for the submission of reports of income and expenses of electoral campaign: <https://www.cnecuentasclaras.gov.co/Resolucion-3097-Uso-obligatorio-Cuentas-Claras.pdf>.

⁵⁶ Article 107, Political Constitution of Colombia, modified by Article 1 of Legislative Act 01 of 2009.

⁵⁷ Donated by Transparencia por Colombia to the CNE, and adopted by Resolution 3090 of 2013, which makes it the official means of accounting for income and expenses of political parties: <https://www.cnecuentasclaras.gov.co/>.

⁵⁸ See TPC et al. (2020). *Financing Policy, Notes from a regional perspective, cases Argentina, Brazil and Colombia*. Accessed: June 14, 2021.

⁵⁹ *Law 1475 of 2011*. Whereby rules for the organization and operation of political parties and movements, electoral processes and other provisions are adopted: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43332>.

rendering of accounts, parties and movements must submit a declaration of assets, income and expenses before the National Electoral Council in the first four months of the year.

It is worth noting that Law 1475 prohibits the financing of political parties, movements and campaigns to which they can make anonymous contributions, that are related to or suspected of illegal activities or whose purpose is to finance anti-democratic purposes, natural persons against whom there are accusations or charges in criminal proceedings for crimes related to the financing, membership or promotion of illegal armed groups, drug trafficking, crimes against public administration, against the mechanisms of democratic participation and against humanity, those who come from natural or legal persons whose income in the previous year has originated in more than fifty percent of contracts or subsidies, crimes against public administration, those who have a direct or indirect link with foreign governments or natural or legal persons and who manage public or parafiscal resources, among others.

A punishable offense under the law is to allow the financing of the organization and/or electoral campaigns with prohibited sources of financing⁶⁰, a particularly relevant issue for Colombia due to the possible use of money from illicit activities such as drug trafficking for political financing⁶¹.

For its part, Article 7 of Law 1864 of 2017⁶² provides that anyone who offers the votes of a group of citizens in exchange for money or a gift with the purpose of having such citizens cast their vote in favor of a certain candidate, party or political current, vote blank, abstain from doing so or do so in a certain direction in a plebiscite, referendum, popular consultation or recall of mandate, shall incur imprisonment of four (4) to nine (9) years and a fine of four hundred (400) to one thousand two hundred (1200) legal monthly minimum wages in force.

⁶⁰ According to Article 14 of Law 1864 of 2017: "The manager of the electoral campaign who allows in it the procurement of goods from sources prohibited by law to finance electoral campaigns, shall incur imprisonment of four (4) to eight (8) years, a fine of four hundred (400) to one thousand two hundred (1,200) legal monthly minimum wages in force and disqualification from the exercise of public rights and functions for the same period of time. The same penalty shall be incurred by the respective candidate in the case of uninominal positions and preferential voting lists who performs the conduct described in the preceding paragraph. The same penalty shall be incurred by the candidate of a non-preferential voting list who intervenes in the procurement of goods from such sources for the financing of his electoral campaign. The same penalty shall be incurred by the one who contributes resources coming from sources prohibited by law to the electoral campaign".

⁶¹ An exemplary case is the entry of drug money to the campaign of former president Ernesto Samper Pizano, who claimed ignorance of the matter. El Espectador. (2020). *La infiltración de dineros del narcotráfico en mi campaña fue una operación nacional*. Retrieved from El Espectador Website: <https://www.elespectador.com/colombia2020/justicia/verdad/la-infiltracion-de-dineros-del-narcotrafico-en-mi-campana-fue-una-operacion-nacional-samper-articulo-905551/>. Accessed: August 9, 2021.

⁶² Whereby Law 599 of 2000 is amended and other provisions are issued to protect the mechanisms of democratic participation: http://www.secretariasenado.gov.co/senado/basedoc/ley_1864_2017.html.

When reviewing the income and expenditure reports of political campaigns, it is striking that in all the electoral processes held since the 2011, the most important source of income has been from private sources. This situation opens the possibility that candidates who have been financed or have debts with private financiers, once they are elected and begin to exercise their functions, may be influenced to reward those who contributed to their campaigns contracts or favors⁶³, which limits their ability to exercise their mandate independently and make decisions that represent the general interest⁶⁴.

A recent campaign financing scandal involving illicit sources is that of Odebrecht, which financed the presidential campaigns of Juan Manuel Santos and Óscar Iván Zuluaga. In this case, although investigations were opened, none of them has sanctioned the candidates in an exemplary and forceful manner⁶⁵.

Another case of possible illegal financing of presidential campaigns occurred in the last presidential elections in June 2018. This case was known by the public opinion as the "Ñeñepolítica", in which there were alleged movements of money deriving from drug trafficking that allegedly helped Iván Duque's campaign. This investigation was recently archived by the National Electoral Council⁶⁶.

One of the sanctioned electoral corruption cases that received great attention from the media and civil society in general, was that of former congresswoman Aida Merlano, who was sentenced by the Supreme Court of Justice to 11 years and 4 months in prison for the crimes of voter corruption (vote buying), conspiracy to commit a crime and illegal carrying of weapons, including the immediate loss of her seat and rank as a congresswoman⁶⁷.

Other problems associated with the illicit financing of campaigns are the outsourcing of resources through foundations or other actors that allow the circumvention of legal restrictions through legal or natural persons different from the real origin of the resources;

⁶³ The following document points out that, in practice, this influence in financing can translate into undue influence in the development of norms, execution of public policies, priority access to state benefits and manipulation of election processes of persons or companies that will execute state contracts, among other practices. Electoral Observation Mission. (2018). *Democracias Empeñadas: De financiadores privados a contratistas públicos*. Retrieved from https://moe.org.co/wp-content/uploads/2018/11/Democracias-Empe%C3%B1adas_Digital-1.pdf. Accessed: August 9, 2021.

⁶⁴ See TPC. (2019b). *Elections & Contracts Report 2018-2019*.

⁶⁵ TPC. (2021c). *What haven't we talked about in the Odebrecht case?* Retrieved from Transparencia por Colombia website: <https://transparenciacolombia.org.co/2021/04/08/de-que-no-hemos-hablado-en-el-caso-odebrecht/>. Accessed: May 27, 2021.

⁶⁶ Caracol News. (June 21, 2021). *Corruption in pandemic: 2.5 billion pesos stolen, according to the Attorney General's Office*. Retrieved from Noticias Caracol website: <https://noticias.caracoltv.com/colombia/corrupcion-en-la-pandemia-se-han-robado-2-5-billones-de-pesos-segun-la-fiscalia>. Accessed: June 30, 2021.

⁶⁷ Supreme Court. (2020). *Supreme Court upholds conviction against Aida Merlano and refers sentence to the Senate to apply the empty chair*. Retrieved from Supreme Court of Justice Website: <https://cortesuprema.gov.co/corte/index.php/2020/05/29/corte-suprema-ratifica-condena-contra-aida-merlano-y-remite-sentencia-al-senado-para-que-aplique-la-silla-vacia/>. Accessed: June 30, 2021.

and the lack of clarity with respect to loans from natural or legal persons, other than financial entities, which could be donations that are passed off as credits on behalf of the candidates and that would allow exceeding the donation ceilings of individuals established by Law 1475 of 2011⁶⁸ or that exceed the contribution ceilings allowed in the Anti-Corruption Statute to be able to be contractors of the State⁶⁹.

In addition to the financing of politics, Congress adopted new rules for the organization and operation of political parties and movements and electoral processes through Law 1475 of 2011. This law stipulates that political parties and movements shall adjust their organization and operation to the principles of transparency, objectivity, morality, gender equity and the duty to present and disclose their political programs in accordance with the provisions of the Constitution, the laws and their bylaws. This law also indicates that political parties and movements will be sanctioned if there is a violation or contravention of the rules governing their organization, operation or financing, as well as for the conduct of their directors.

Good practices

- The law obliges political parties and movements to render accounts of income and campaign expenses before the National Electoral Council (CNE), in order to guarantee transparency in the management of financial resources, both of the resources destined to their operation, as well as those destined to financing the campaigns of their candidates in electoral periods.
- Candidates and political parties are obliged to use the electronic tool called *Cuentas Claras* (Clear Accounts) as the official mechanism for filling out the income and expenditure ledger.
- Political parties and political movements must have bylaws that regulate all actions to be developed internally or externally of the political organization.
- The money received by political parties must be managed through a single account opened by the campaign manager in a legally authorized financial entity. These accounts are exempt from the tax on banking transactions and it is the Superintendence of Finance who establishes the special control and surveillance regime to guarantee transparency in the management of these accounts.

⁶⁸ Private Financing Limits (Art. 23) *"campaigns and prior authorization of the National Electoral Council, outstanding obligations may be cancelled with the partial forgiveness of credits or with resources originating from private financing sources and within the individual limits indicated in this provision, but such forgiveness, contributions or contributions shall not have the character of donations or the tax benefits recognized in the law for this type of donations."*

⁶⁹ *"Natural or legal persons who have financed political campaigns for the Presidency of the Republic, governorships, mayorships or the Congress of the Republic, with contributions greater than two percent (2.0%) of the maximum amounts to be invested by candidates in electoral campaigns in each electoral district, who may not enter into contracts with public entities, including decentralized entities, of the respective administrative level for which the candidate was elected"* (Law 1474, 2011).

Deficiencies

- Although political parties and movements are obliged to render accounts of their campaign income and expenses, there are no means of verifying the veracity of the reports submitted or if they have been manipulated in any way. This limits the possibility of identifying possible irregularities in the origin of the resources or in the exceeding of campaign ceilings.
- The procedures for auditing and certifying information on income and expenses are carried out by the Political Financing Fund. However, the review concentrates on formally verifying the coincidence and support of income and expenditures, but it is not possible to know in depth if the information is complete. To solve this problem, the CNE's function should be joint with that of control bodies and the promotion of citizen complaints about irregularities in campaign financing. In addition, the review of income and expenditure reports is usually carried out after the elections and not while they are ongoing.
- Although investigations have been opened into cases of illicit financing, they are not always conclusive or end in failures due to the difficulties involved in investigating the origin of the resources.

4.1.5 Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

Conflicts of interest and asset declarations are laid down in the Political Constitution of Colombia. Article 122 of the Constitution states the following: *"There shall be no public official that does not have functions detailed in law or regulation... Before taking office, when retiring from office or when requested to do so by a competent authority, he/she shall declare, under oath, the amount of his/her assets and income. Said declaration may only be used for the purposes and aims of the application of the rules of the public servant"*. However, there are still difficulties in its implementation.

The Public Service Integrity Code, adopted by Law 2016 of 2020⁷⁰, is based on five values: honesty, respect, diligence, fairness and commitment; and is aimed at public servants at the national and territorial levels, and is the replacement of the codes of ethics that previously existed in each entity, which were heterogeneous and did not allow for the identification of a set of essential values within the public service⁷¹.

This law created the National Integrity System, which is led by the Administrative Department of the Civil Service (DAFP) and has a coordinating committee made up of the National Commission of Moralization (CNM) and the Regional Commissions of Moralization

⁷⁰ Law 2016 of 2020. Whereby the Code of Integrity of the Colombian Public Service is adopted and other provisions are issued.

⁷¹ DNP. (May 03, 2021). Code of Integrity of the Public Service. Retrieved from www.dnp.gov.co/DNPN/la-entidad/c%C3%B3digo-de-integridad. Accessed: June 8, 2021.

(CRM)⁷². To date, the DAFP is in the process of designing the structure and operating model of this system, with the help of the European Union⁷³. It is not officially known when it will start operating and whether it will have the capacity to impose sanctions. The application of the Integrity Code has been promoted by the DAFP through training and accompaniment to public entities at the national and territorial levels.

Since it is based on the five values mentioned above, the current outline of the Code of Integrity does not encourage an in-depth study of the ethical problems or dilemmas that public servants may face in their specific positions, and this could discourage reflection on these dilemmas and blur the road map for the actions that public servants should take. Therefore, codes of ethics or integrity should not become a tool for promoting values, but rather clear procedural guidelines for dealing with particular situations in which the ethics of public servants may be affected⁷⁴.

Moreover, Colombia issued Law 2013 of 2019⁷⁵, which requires the declaration of assets, income and registration of conflicts of interest of public servants elected by popular vote, magistrates of high judicial courts, congressmen, ambassadors and officials who hold managerial positions in the State. This information may be consulted by any citizen through the websites designed for this purpose⁷⁶. In the case of Congress, Article 286 of Law 5 of 1992⁷⁷ regulates the procedures for possible conflicts of interest of members of Congress.

The aforementioned law complements the provisions of the Regime of Ineligibilities, Incompatibilities and Conflicts of Interest contemplated in the Single Disciplinary Code under Law 734 of 2002⁷⁸ and institutional training efforts, such as the guide for the

⁷² Law 2016. (2020). Whereby the Code of Integrity of the Colombian Public Service is adopted and other provisions are issued: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=107254>.

⁷³ DAFP. (2020). *European Union will structure the National Integrity System in Colombia*. Retrieved from Departamento Administrativo de la Función Pública website: <https://www.funcionpublica.gov.co/-/uni-c3-b3n-europea-estructurar-c3-a1-el-sistema-nacional-de-integridad-en-colombia>. Accessed: June 10, 2021.

⁷⁴ See TPC. (2018). *Recommendations on transparency and anti-corruption for the national government 2018-2022*.

⁷⁵ Law 2013 of 2019. Whereby it seeks to ensure compliance with the principles of transparency and publicity through the publication of declarations of assets, income and registration of conflicts of interest: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=104572>.

⁷⁶ The websites where you can consult the declaration of assets, income and conflicts of interest registry are: <https://www.funcionpublica.gov.co/fdci/consultaCiudadana>
<https://www.funcionpublica.gov.co/web/sigep>.

⁷⁷ Law 5 of 1992. Whereby the Rules of Procedure of Congress are issued; the Senate and the House of Representatives: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=11368>.

⁷⁸ Law 734. (2002). Whereby the Single Disciplinary Code is enacted: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4589>. This law will be repealed in 2022 and replaced by Law 1952, which will enter into force at that time.

identification and declaration of conflicts of interest in the Colombian public sector, were developed by the DAFP in 2021⁷⁹.

The Anti-Corruption Statute, Law 1474 of 2011⁸⁰, also stipulates some disqualifications to prevent the practice of the "revolving door" in the public and private sector, prohibiting former public officials from engaging in work related to the position they held for the term of *"two years following them leaving public office"*.

Despite the advances in the regulatory framework, in practice, it is not clear whether all conflicts of interest are declared and there is no effective mechanism for follow-up or verification of the information reported in compliance with Law 2013 of 2019. This situation weakens the mechanisms for preventing conflicts of interest and could hinder the eventual sanction by the investigation and control bodies, as well as hinder public scrutiny.

Information on conflicts of interest is published through the SIGEP application⁸¹. However, the documents stored there are in pdf-format, which makes it difficult to interoperate and process the data recorded by public servants.

Good practices

- Public entities in Colombia have general guidelines and standards for the implementation of ethical values in public service.
- Colombia has a solid regulatory framework for the prohibition of practices such as conflict of interest within public entities, although the implementation mechanisms still have certain weaknesses and gaps.
- Colombia has specific provisions to regulate the civil service, including the regime of disqualifications, incompatibilities and conflicts of interest, based on principles and values, the pursuit of the public interest and the prevention of corruption.
- Public officials have the legal obligation to declare conflicts of interest and their declarations of assets and income in a transparent, timely and proactive manner, through a publicly accessible electronic platform.

Deficiencies

- Integrity Codes do not necessarily respond to the ethical problems or dilemmas faced by public servants. More specificity is required in the development of ethical guidelines for entities, as well as mechanisms to guide ethical behavior.

⁷⁹ DAFP. (2021). *Manual Único de Rendición de Cuentas, Version 2*. Retrieved from Departamento Administrativo de la Función Pública website: <https://www.funcionpublica.gov.co/web/murc>. Accessed: June 14, 2021.

⁸⁰ <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43292>.

⁸¹ The SIGEP conflict of interest consultation can be found at the following link: <https://www.funcionpublica.gov.co/fdci/consultaCiudadana>.

- The development of the National Integrity System is still pending since the issuance of Law 2016 of 2020.
- Improved procedures are required for the publication of declarations of assets and income and conflicts of interest, which allow the automation of the information upload, as well as facilitating the follow-up of the publication, modification and updating of the same.
- Information on conflicts of interest and assets and income of public servants is not available in reusable formats or open data, which makes it difficult for public consultation and institutional and citizen control.

4.1.6 Art. 8.4, 13.2 – Reporting mechanisms and whistleblower protection

Colombia does not have a solid regulatory framework for the reporting and protection of whistleblowers in general, or whistleblowers who report acts of corruption. In the first place, whistleblowing in the public administration has been based on the specific codes and regulations of the entities⁸², which do not necessarily have the tools to safeguard the identity of whistleblowers, facilitate anonymity or provide protection to the whistleblower, if necessary⁸³.

In public entities, the Internal Disciplinary Control Offices are the first to receive reports of corruption, and have the power to investigate and impose the respective sanctions depending on the subject and seriousness of the matter. Otherwise, they must be referred to the competent authorities.

The investigative and sanctioning entities in the country are the Attorney General's Office of the Nation, in charge of disciplinary matters; the Office of the Comptroller General of the Republic, in charge of fiscal matters; and the Prosecutor General's Office of the Nation, which has jurisdiction over criminal matters⁸⁴.

⁸² Whether they are the investigation and sanctioning bodies, or the entity where the event to be reported occurred.

⁸³ TPC. (2017a). *Transparency Index of Public Entities 2015-2016*. Bogota: <https://transparenciacolombia.org.co/2019/03/05/indice-de-transparencia-de-las-entidades-publicas-enero-de-2015-a-abril-de-2016/> . Accessed: July 7, 2021.

⁸⁴ "In general, these three entities have, in their respective web pages, a section in which they indicate how to denounce. However, they do not emphasize whether it is an act of corruption or some other kind of irregularity that does not involve corruption. What they usually point out in their web pages is where to report, whether it is a physical or virtual location, and how the reporting process is and the time in which the request is resolved" TPC. (2020a). *Whistleblowing and whistleblower protection in Colombia*. P. 14. Retrieved from Transparencia por Colombia website: <https://transparenciacolombia.org.co/2020/07/01/denuncia-proteccion-denunciante/>. Accessed: July 7, 2021.

However, in 2021 the National Government has sought to facilitate the reporting of acts of corruption⁸⁵ through the Colombian Anticorruption Portal (PACO) and the Institutional Transparency and Anticorruption Network (RITA).

On the one hand, PACO has set up a channel for reporting and describing possible acts of corruption with the possibility of reserving the data of the whistleblower as well as those involved⁸⁶. There is still no data on the effectiveness of the system, its follow-up mechanisms and the guarantee of data protection for whistleblowers.

On the other hand, RITA⁸⁷ is a way for public entities to receive complaints through the own means of each of the entities that make up the network and with the responsibility of the internal control offices. Although RITA was intended to provide the entities with secure channels for the reception, analysis and management of reports of risks or acts of corruption, no processes, procedures or tools have been identified to guarantee data protection, anonymity or protection of the reporter. In many cases, public entities receive the reports by means of an institutional e-mail and not through systems that guarantee the correct exercise and procedure of the report. The RITA website does not present statistics on the complaints received.

Article 34, paragraph 24 of the Unified Disciplinary Code⁸⁸ states that all public servants must report crimes, misdemeanors and disciplinary offenses of which they have knowledge, except as otherwise provided by law. Similarly, numeral 34 mentions that guarantees must be offered to public servants or individuals who report unlawful actions or omissions of superiors, subordinates or individuals who manage public resources or exercise public functions. The foregoing indicates that public officials must report all types of illegitimate actions of which they are aware; however, no effective measures are identified to protect whistleblowers and reduce the coercion that may exist.

⁸⁵ Taking into account the function of the TS to *"Report directly or transfer to the control entities and the Attorney General's Office alleged crimes against the public administration, against the economic and social order, or against the economic patrimony, as well as possible disciplinary infractions, which due to their seriousness are brought to its attention, as well as the complaints filed directly by citizen observers and citizens in general"*. Decree 1784. (2019). Whereby the structure of the Administrative Department of the Presidency of the Republic is modified. Bogotá: Presidency of the Republic: <https://dapre.presidencia.gov.co/normativa/normativa/Decreto-1784-4-octubre-2019-Estructura-DAPRE.pdf>. Access: July 8, 2021.

⁸⁶ Secretariat of Transparency. (2021). *Complaint Form*. Retrieved from Government Anticorruption Portal: <https://portal.paco.gov.co/formularioDenuncia.html>. Accessed: July 13, 2021.

⁸⁷ Institutional Transparency and Anticorruption Network: <http://www.secretariatransparencia.gov.co/revision-peticiones-corrupcion/rita>. Access: July 13, 2021.

⁸⁸ See Law 734. (2002). <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4589>. This law will be repealed in 2022 and replaced by Law 1952 which will enter into force by that time.

For its part, Article 37 of Law 863 of 2003⁸⁹ regarding reports of evasion and smuggling as behaviors typified as acts of corruption, stipulates that whoever reports facts that constitute acts of corruption (...) providing evidence (...) shall be entitled to a cash reward equivalent to 50 percent of the costs of control. However, this type of rewards is inappropriate in the Colombian context, among other reasons, because *"criminal proceedings for corruption take an average of approximately eight years, so it would be difficult to encourage reporting knowing that it is necessary to wait this long period and that even at the end of the investigation the alleged act of corruption is not judged as such, which would leave render the possibility of being granted the reward obsolete"*⁹⁰.

Recently, two legislative initiatives were presented to regulate whistleblowing in the country, which have not been successful. The first one was presented by means of the Pedro Pascacio Martínez Project, but was withdrawn in 2020, and the second one was presented in Bill 341 in which the chapter on whistleblowing was eliminated after the first debate in the First Commission of the Senate⁹¹.

As can be seen, the country has legislation dedicated to the reporting and protection of corruption whistleblowers, which contemplates the different acts of corruption and the different actors involved in both the public and private sectors, which eliminates evidentiary impediments to reporting and also guarantees a speedy passage of the report. At the same time, the protection of corruption whistleblowers is not seen as a priority and remains a pending issue in national legislation.

Good practices

- Colombia has recently created platforms such as PACO and RITA for filing complaints. However, it is necessary to conduct a security study of these platforms and follow up on their implementation.
- Some reporting channels are anonymous and allow documents to be attached as proof of corruption cases; however, they often cannot be followed up on.

Deficiencies

- There is no legislation dedicated to the reporting and protection of the whistleblower or reporting person of acts of corruption, which contemplates the risks of reporting, conditions of anonymity, data protection, job stability, among other issues. In the framework of RITA, for example, currently most of the reports

⁸⁹ Law 863 of 2003. Whereby tax, customs, fiscal and control regulations are established to stimulate economic growth and the reorganization of public finances:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=11172>.

⁹⁰ See TPC. (2020a). *Whistleblowing and whistleblower protection in Colombia*. P. 12.

⁹¹ TPC. (2021d). *Congress again fails to protect corruption whistleblowers*. Retrieved from Transparencia por Colombia Website: <https://transparenciacolombia.org.co/2021/06/17/congreso-vuelve-a-fallar-en-proteger-a-denunciantes-de-corrupcion/>. Accessed: July 19, 2021.

are made through an institutional e-mail and not through adequate systems to receive corruption reports anonymously.

- Most entities do not have mechanisms in place to ensure the security of whistleblower data, anonymity and whistleblower protection.
- There is disarticulation between forms and procedures for receiving complaints depending on the type of entity in which they are filed.
- There are no positive incentives to file complaints because the processes are slow, corruption is not necessarily sanctioned, the lack of security conditions and labor stability, and the legal costs that the legal process may entail.
- The public does not have full confidence in the complaint mechanisms in place and is afraid of future reprisals after filing a complaint.

4.1.7 Art. 9.1 – Public Procurement

Public procurement in Colombia is governed by Law 80 of 1993 (General Statute of Public Administration Contracting). Article 3 of this law states that *"Public servants shall take into consideration that when entering into contracts and with the execution thereof, the entities seek the fulfillment of state purposes, the continuous and efficient provision of public services and the effectiveness of the rights and interests of those who collaborate with them in the achievement of such purposes. Individuals, on the other hand, shall take into account when entering into and executing contracts with state entities that they collaborate with them in the achievement of their purposes and fulfill a social function which, as such, implies obligations"*⁹².

Likewise, Article 23 of the same law states that the contractual actions of state entities must observe the principles of transparency, equality, economy and responsibility. Other principles that should be added to the standards of conduct governing public servants, are the rules of interpretation of contracting and administrative law.

Law 1150 of 2007⁹³ developed measures for efficiency and transparency in public contracting based on the provisions of Law 80 of 1993. It sets new standards to prevent corruption in public contracting and creates procedures for the selection of contractors through five selection methods: public bidding, merit-based competition, abbreviated selection, minimum amount contracts and direct contracting.

- Competitive bidding is the most complete and generally the most widely used selection process for high value procurement. It includes a process of publication, evaluation of bids, hearings and selection of the best bidders.

⁹² Law 80. (1993). Whereby the General Statute of Public Administration Contracting is issued: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=304>.

⁹³ Law 1150 of 2007. Whereby measures for efficiency and transparency are introduced in Law 80 of 1993 and other general provisions on contracting with Public Resources are issued: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=25678>.

- The merit-based competition is intended for the selection of personnel and is used to hire consultants, auditors, project managers, among others, in which open competition or pre-qualification systems may be used⁹⁴.
- Abbreviated selection corresponds to the modality of objective selection foreseen in those cases in which, due to the characteristics of the object to be contracted, the circumstances of the contracting or the amount or purpose of the good, work or service, simplified processes (use of reverse auctions, commodity exchanges or purchases by catalog) can be carried out to guarantee the efficiency of the contractual management.
- Minimum amount contracting refers to procedures with short time spans to select contractors, as long as the value of the acquisition does not exceed 10% of the lowest amount of the entity⁹⁵, through a public selection process in which the option with the lowest value is chosen.
- Direct contracting is the modality in which entities contract their goods or services without the requirements of a complex selection process. This modality is usually used for emergency situations, contracting of loans, contracts and inter-administrative agreements.

Despite the existence of these modalities, Articles 13 to 16 of Law 1150 state that there are certain types of entities that are not subject to these contracting modalities and are therefore part of a "special regime". This exception allows for the streamlining of contractual processes, but may end up affecting the principles of quality, objective selection and publicity of public procurement, since they are not governed by the principles of the Colombian Procurement Statute.

According to Article 3 of Law 1150, the issuance of administrative acts, documents, contracts and in general the acts derived from the pre-contractual and contractual activity, may take place by electronic means⁹⁶. Precisely from this indication in the law, the Electronic System for Public Procurement (SECOP) was created, which allows for information to be uploaded and the contractual information of the country to be consulted in open formats⁹⁷, and it is open for consultation to the public.

⁹⁴ The list of pre-qualified bidders will be drawn up by means of a public call for bids, allowing the establishment of limited lists of bidders using, among others, criteria of experience, intellectual and organizational capacity of the bidders, as the case may be. Finally, direct contracting is an exceptional contracting modality, so its application is restrictive (Law 1150, 2007).

⁹⁵ The values of the smallest amount and minimum amount are described in Article 2 of Law 1150 of 2007.

⁹⁶ *"For the processing, notification and publication of such acts, electronic supports, media and applications may be used. The mechanisms and instruments through which the entities will comply with the obligations of publicity of the contractual process will be indicated by the National Government"* (Law 1150, 2007).

⁹⁷ Among other documents, it allows the consultation of the bidding documents, liquidation, act of declaration of desertion of the selection processes and, in turn, the additions, modifications or suspensions in order to provide more information to the public bidding and be transparent in the selection processes (Law 1150, 2007).

SECOP has been evolving to become a transactional tool in which all contractual procedures can be carried out virtually, through the electronic tool called SECOP II⁹⁸. This second version, which is being gradually implemented in public institutions, is expected to replace the first one in the next few years.

In order to increase transparency and monitoring of public procurement in the country, the *National Agency of Colombia Compra Eficiente* was created in 2011. This decentralized entity of the executive branch, with legal status, its own assets and administrative and financial autonomy, aims to "*develop and promote public policies and tools for procurement and state contracting processes, in order to generate greater efficiency, transparency and optimization of state resources*"⁹⁹. The main functions of the entity are the formulation of policies, plans and programs seeking to optimize supply and demand in the public procurement market:

- Regulatory streamlining for more efficient operations;
- The development and dissemination of policies, standards and instruments to facilitate procurement and promote efficiency;
- Answering queries on the application of the rules and issue circulars on the subject;
- The development of e-procurement tools within the Public Procurement System;
- Providing support to suppliers to facilitate and improve their participation in the Public Procurement System;
- Dissemination of best practices and coordination of training programs with other State Entities.

The agency has not only worked on the development of SECOP, but also on the generation of procurement guidelines for public entities, the preparation of guides, the consolidation of procurement-related regulations, the design of demand aggregation tools and processes (such as price framework agreements and the Colombian State's Virtual Store), the preparation of standard documents and the preparation of reports and tools to make the country's public procurement more visible¹⁰⁰.

Another regulation governing public procurement is found in Law 1882 of 2018¹⁰¹ which regulates the adoption of standard documents for public works, establishing enabling

⁹⁸ <https://colombiacompra.gov.co/secop-ii>.

⁹⁹ Decree 4170. (2011). Retrieved from Por el cual se crea la Agencia Nacional de Contratación Pública - Colombia Compra Eficiente-, se determinan sus objetivos y estructura: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=44643>.

¹⁰⁰ National Agency Colombia Compra Eficiente. The virtual store of the Colombian State can be consulted at: <https://colombiacompra.gov.co/>.

¹⁰¹ Law 1882 of 2018. Whereby provisions aimed at strengthening public procurement in Colombia, the Infrastructure Law and other provisions are added, modified and dictated: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=84899>.

requirements, technical factors and selection factors, as well as good contractual practices that will be mandatory for all entities subject to the General Statute of Public Administration Contracting.

In Colombia, institutional oversight is carried out in two main ways. One is through the Internal Control Offices (OCI) that review the application of management processes and procedures of public entities, and the other is through the Oversight and Investigation Bodies that review disciplinary, fiscal and criminal matters. In this second way of oversight it is not possible to review all contractual processes since the capacities are limited and the prioritization of the processes to be verified by these entities is initiated according to the audit programs (in the case of the CGR) or in response to alerts reported by the OCI, by public servants or by other actors.

Although Colombia has made significant progress in consolidating public procurement processes and procedures, challenges persist in the implementation of these practices, such as the dispersion of contracting modalities and methods that are complex for public entities, the ease of direct contracting in public entities, and the lack of more effective controls on contracting by internal control offices and external investigation and sanction agencies.

Although it is established that direct contracting only proceeds in certain cases, its use in Colombia has been frequent. The Transparency Index of Public Entities identified that in 2017, 74% of the contracting of national entities was carried out through this modality¹⁰². Reasons for this, among other things, are the 11 grounds for direct contracting established in Law 1150; among them, contracting for the provision of professional services and management support. In addition, especially during the health emergency decreed by the Ministry of Health, Decree 440 of 2020 allowed the use of the manifest urgency resource as a reason for direct contracting.

In terms of publication of information, although progress has been made in the consolidation of SECOP and in the publication of information in open data that has facilitated consultation, social control and participation face challenges such as: the lack of timeliness in the publication of information¹⁰³, the low quality of the information due to spelling and typing errors¹⁰⁴, the corporate names reported and the purpose of the contracts, among others. Additional challenges have been the lack of standardization between the SECOP I and II platforms, and the difficulties to interoperate the databases

¹⁰² See TPC. (2017a). *Transparency Index of Public Entities 2015-2016*. Bogotá.

¹⁰³ In the elaboration and monitoring of contracting by the Ciudadanía Activa alliance (which monitored contracting during the COVID-19 pandemic), contracts were found to be uploaded to SECOP up to three months after they were signed. TPC. (2020d). *Citizen recommendations in the framework of public procurement in the COVID-19 emergency. Transparencia Salvavidas Strategy*. Retrieved from <https://transparenciacolombia.org.co/wp-content/uploads/informe-recomendaciones-ciudadania-activa.pdf>. Accessed July 23, 2021.

¹⁰⁴ These affect fields such as contract values and additions, tax identification numbers of entities and contractors.

with other databases such as the Single Business Registers and the databases for reporting Income and Expenditures of Electoral Campaigns, the absence of mechanisms to follow up on the execution of the contractual activity, and the confidentiality of information that has been alleged by the State for not publishing information on certain contracts¹⁰⁵.

During the COVID-19 health emergency, some irregularities have been found regarding public contracting, among them the lack of suitability or non-correspondence of the contractual objects with the business name of the contractors. In its fifth report on contracting during the COVID-19 emergency¹⁰⁶, Transparencia por Colombia found that most of the contracting was carried out through direct contracting modalities, as follows:

TYPE OF PROCESS	NUMBER OF CONTRACTS	VALUE OF CONTRACTS	PERCENTAGE OF EMPLOYEES
Direct contracting	34054	\$ 3.124.502.457.511,48	61,9%
Special regime	26086	\$ 1.414.332.945.125,36	24,4%
Inter-administrative agreements	273	\$ 411.680.224.183,58	8,2%
Public Bidding	60	\$ 73.319.075.171,67	1,5%
Abbreviated selection	296	\$ 102.428.314.891,48	2,0%
Minimum amount contracting	3842	\$ 62.112.121.023,02	1,2%
Auction	136	\$ 27.002.648.267,00	0,5%
Public-Private Partnership	2	\$ 10.107.349.708,00	0,2%
Public Works Bidding	5	\$ 4.589.731.674,00	0,1%
Open Merit Competition	9	\$ 1.408.847.088,00	0,0%
Grand Total	64054	\$ 5.045.520.866.215,59	

Good practices

- There are measures to promote transparency and competition, such as demand aggregation mechanisms (framework agreements and the Colombian State Virtual Store) and standard documents for public works.
- The country's contractual information is publicly available for consultation and download in open formats.
- SECOP is available not only as a tool for publication, consultation and visualization of information, but also, in its most recent version, as a transactional tool for carrying out online contractual processes.

¹⁰⁵ TPC. (June 10, 2020b). *Segundo Reporte de Seguimiento a la contratación Pública en la emergencia COVID-19*. Retrieved from Transparencia por Colombia Website: <https://transparenciacolombia.org.co/Documentos/Publicaciones/gestion-publica/Segundo-reporte-Ciudadania-Activa.pdf>. Accessed: July 23, 2021.

¹⁰⁶ TPC. (September 2021h). *Fifth monitoring report on public contracting during COVID-19*. Retrieved from Transparencia por Colombia Website: <https://transparenciacolombia.org.co/2021/09/29/quinto-informe-de-seguimiento-a-la-contratacion-publica-en-la-emergencia-covid-19/>. Accessed: October 2021.

- *Colombia Compra Eficiente*, an entity that seeks to improve the country's contractual information, and to develop unified policies and procedures for public procurement in the country.

Deficiencies

- Although there are regulations that establish procedures for objective selection based on competition criteria, they also facilitate direct contracting for certain types of contracts such as those for the provision of professional services and special arrangements.
- The different procurement regulations are often complex, and there is a need to unify and simplify the regulations.
- Although progress has been made in the registration of contractual information in SECOP I, II and the Virtual Store of the Colombian State, there are still difficulties in guaranteeing the quality of the data, standardizing them and extending the use of SECOP to all obligated parties.
- There is no detailed and interoperable information on the origin of resources for each of the country's public contracts.
- There is no robust mechanism for publishing the status of contracts after they are signed, including contract progress, failures or non-compliance.
- There are delays in the uploading of contractual information to the SECOP platforms. Such delays can be more than three months.

4.1.8 Art. 9.2 and 9.3 – Management of public finances

In Colombia, the General Budget of the Nation (PGN) is regulated by Decree 111 of 1996,¹⁰⁷ which compiles the Organic Budget Statute, which contains the basic aspects of the management, distribution and approval of this budget, as well as the setting of financial goals for the public sector and the distribution of surpluses.

This decree describes the legislative process through which the draft national budget must pass. In this regard, the decree indicates that Congress may open spaces to listen to the citizenry or relevant interest groups through public hearings and other types of consultation mechanisms; however, the opening of these scenarios is at the discretion of the corporation. In practice, these types of spaces are infrequent.

Regarding transparency in the debate of the budget bill, the Fiscal Observatory of the Universidad Javeriana has been warning about the lack of transparency in the legislative process. For example, in the definition of the Budget 2021 "*although they had 20 days to do so, in just one day of discussions, the congressmen and women -in a semi-presential*

¹⁰⁷ Decree 111 of 1996. By which Law 38 of 1989, Law 179 of 1994 and Law 225 of 1995, which form the organic statute of the budget, are compiled. Retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=5306>. Accessed on July 30, 2021.

manner- gave the green light to the papers prepared with the Ministry of Finance". Additionally, working meetings were held that were not considered as official spaces and therefore were not published on the Congress page¹⁰⁸.

In terms of budget transparency, the Ministry of Finance and Public Credit, as well as all public entities at the national and territorial level, are obliged to render accounts on their administrative and budgetary management in accordance with Law 489 of 1998¹⁰⁹ and Law 1757 on Citizen Participation of 2015¹¹⁰ in accordance with the indications of the Single Accountability Manual¹¹¹. Also, the Law on Access to Public Information - Law 1712 of 2014 - obliges entities to publish their budgets and budget executions on their respective websites.

Since 2011, the country has had the Economic Transparency Portal (PTE)¹¹², a website for public consultation that contains basic information on the PGN, national revenues and expenditures, national contracts, territorial contracts, the General System of Participation, the General System of Royalties, and other transfers. Although the PTE has made progress in providing general budget information, it is necessary to strengthen the tool to provide more detailed content, interoperate the PTE's budget information with public entities, link the site with SECOP and improve general user friendliness.

Despite certain efforts, the road to guarantee budget transparency is long, and opacity in the management of public resources is frequent. For example, in the midst of the crisis caused by COVID-19, it has not been possible to access the "*peso by peso*" detail of the use of public resources for the management of the pandemic and their distribution¹¹³. An example of this is the news about the cost overruns that were denounced by the Attorney

¹⁰⁸ Universidad Javeriana. (2020). *In less than 12 hours, Congress approved the 2021 Budget*. Retrieved from Fiscal Observatory Website: <https://www.ofiscal.org/post/en-menos-de-12-horas-congreso-aprob%C3%B3-el-presupuesto-2021>. Accessed: July 30, 2021.

¹⁰⁹ Law 489 of 1998. Whereby rules are issued on the organization and operation of national entities, provisions, principles and general rules are issued for the exercise of the powers provided for in paragraphs 15 and 16 of Article 189 of the Constitution and other provisions are issued". Retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=186>. Accessed: August 2, 2021.

¹¹⁰ Law 1757 of 2015. Whereby provisions are issued regarding the promotion and protection of the right to democratic participation". Retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65335>. Accessed: August 2, 2021.

¹¹¹ Public entities also have the Single Accountability Manual, which details the forms and recommendations for disclosing the administrative, budgetary and mission management of the entities. DAFP. (2021). *Manual Único de Rendición de Cuentas, Version 2*. Retrieved from the website of the Departamento Administrativo de la Función Pública: <https://www.funcionpublica.gov.co/web/murc>. Accessed: 14 June 2021.

¹¹² Regulated by National Decree 1268 of 2017. It is possible to consult the website of the Economic Transparency Portal at the following link: www.ptegov.co.

¹¹³ Universidad Javeriana. (2021b). *Continued lack of transparency in the management of pandemic monies*. Retrieved from Javeriana University Website: <https://www.javeriana.edu.co/pesquisa/continua-la-falta-de-transparencia-en-el-manejo-de-dineros-de-la-pandemia/>. Accessed: August 3, 2021.

General's Office and the Comptroller's Office in 2020 regarding the contracting of food and health services to address the health emergency caused by COVID-19¹¹⁴.

Similarly, although civil society is interested in monitoring the management of public resources, to date there is no obligation to involve citizens in the preparation of the PGN or territorial budgets¹¹⁵.

Another of the country's challenges is access to tax information. Among other things, there is no clear information on the tax benefits granted to companies and whether these have served to promote progressive taxation and the efficiency of the system. Nor is there access to anonymized microdata on the payment of taxes, such as personal income tax¹¹⁶.

In terms of accounting information of public entities, regulations are periodically updated by the General Accounting Office of the Nation, which also provides analysis and concepts of accounting standards for the application of the public accounting regime¹¹⁷.

Good practices

- Information on the PGN is published on the Economic Transparency Portal, and the budgets of each public entity are also published on their websites.
- There are standardized norms for the preparation of budgets in the country.
- There are regulations that require the accountability of budgetary information of public entities.

Deficiencies

- Despite these efforts, there is still opacity in the management of public resources. The ETP does not have detailed information on the distribution of resources to public entities and funds.
- There is no unified information system for the publication of budget information by public entities that is interoperable with SECOP.
- There is no obligation to involve citizens in the preparation, execution and monitoring of public budgets.

¹¹⁴ Portfolio. (2020). *Cost overruns denounced in quarantine food and health contracts*. Retrieved from Portfolio website: <https://www.portafolio.co/economia/denuncian-sobrecostos-en-contratos-de-alimentos-y-salud-en-cuarentena-539769>. Accessed: July 5, 2021.

¹¹⁵ Article 100 of Law 1757 states that "*The governments of the territorial entities provided for in the Constitution and the law may carry out participatory budget exercises*"; however, it is not established as an obligation.

¹¹⁶ Henry et al. (2021). *#IWantToKnow: Citizenship in favor of tax transparency*. Retrieved from Friedrich-Ebert-Stiftung Website: <http://library.fes.de/pdf-files/bueros/kolumbien/17377.pdf>. Accessed: August 3, 2021.

¹¹⁷ General Accounting Office of the Nation. (2021). *Public Accounting Doctrine*. Retrieved from Web site of the General Accounting Office of the Nation: <https://www.contaduria.gov.co/doctrina-contable-publica1>. Accessed: August 3, 2021.

- There is opacity in relation to tax collection and tax benefits granted to private companies.

4.1.9 Art. 10 and 13.1 – Access to information and Participation of society

Access to information in Colombia is described in Article 74 of the Political Constitution¹¹⁸, and is regulated by the Law 1712 of 2014 on Transparency and Access to Public Information¹¹⁹. This Law gives the right the category of "fundamental", determines the obligated subjects (of all branches of public power, control bodies, political parties and other subjects that manage or intermediate public resources¹²⁰), indicates tools to manage information within the entities, indicates the procedures for active and passive transparency, assigns functions to the oversight body, and establishes the exceptions for not publishing or granting certain information¹²¹.

Article 4 of the Law mentions that regulated entities must proactively disclose public information and respond in good faith, in an adequate, truthful, timely and accessible manner to access requests, which in turn entails the obligation to produce or capture public information. In order to comply with the above, the regulated entities must implement archival procedures that guarantee the availability of authentic electronic documents over time.

For requests for information made by citizens there is a period of ten working days for public entities to respond, in line with Law 1437 of 2011. In case a request is not answered, the

¹¹⁸ "All persons have the right to access public documents except in cases established by law". See Political Constitution, 1991.

¹¹⁹ Law 1712 of 2014. Whereby the Law of Transparency and the Right of Access to National Public Information is created and other provisions are enacted, <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=56882>.

¹²⁰ The regulated entities are all public entities, all branches of public power and all levels of the state structure, central or decentralized by services or territorially, at the national, departmental, municipal and district levels. Bodies, agencies and independent or autonomous state and control entities, natural and legal persons, public or private, that provide public function, that provide public services with respect to information directly related to the provision of public service, any natural person, legal person or dependency of legal person that performs public function or public authority, with respect to information directly related to the performance of its function. Public companies created by law, State companies and companies in which the State has a shareholding. Political parties or movements and significant groups of citizens. Entities that manage parafiscal institutions, funds or resources of public nature or origin. Natural or legal persons that receive or intermediate territorial and national public funds or benefits and do not meet any of the other requirements to be considered obligated subjects, must only comply with the Law with respect to that information produced in relation to public funds they receive or intermediate (Law 1712, 2014).

¹²¹ Its provisions were regulated through National Decree 1081 of 2015, which stipulated general guidelines for the publication of public information (active transparency), response and follow-up to requests for information (passive transparency), the management scheme for classified and reserved information and the Documentary Management Program to be complied with by traditional and non-traditional obligated entities. The Law was amended by National Decrees 1494, 1862 and 2199 of 2015, with the purpose of correcting drafting errors and complementing Articles 5, 14, 18, 18, 21 and 26. It is worth mentioning that National Decree 1778 of 2020 amended Decree 1081 of 2015, adding a section on the Portal for Peace, which aims to publish information associated with the implementation of the Final Peace Agreement.

citizen may file an appeal for reconsideration before the corresponding entity, and in case it is denied, he/she may go to court or file a tutela action, which is a mechanism to guarantee fundamental rights. Another option available to the citizen is to request the supervision of the right of petition, which is a function of the Attorney General's Office, in which this entity verifies that the requested information is delivered in accordance with the terms of the Law¹²².

The Attorney General's Office, overseer of the Law, is empowered to monitor and control compliance with the Law by the different regulated entities. However, given the complexity and breadth of this law on access to information, the entity requires greater capacities both in the promotion, monitoring and sanctioning of non-compliance with the right to access information.

Some of the weaknesses of the Attorney General's Office as oversight body of the Law are: the lack of establishment of a regime of sanctions for non-compliance with the obligations of the Law, lack of promotion of the burden of proof referred to in Article 28 of the Law, lack of actions to promote the publication of the minimum information required by the Law, especially among non-traditional obligated subjects and the lack of coordination between the PGN and other entities with responsibility for the promotion of access to information¹²³.

To promote the implementation of the Law, the Attorney General's Office created the Active Transparency, Passive Transparency and Transparency and Access to Information for Political Parties and Movements booklets, among other tools to promote access to information.

The Secretariat of Transparency developed guidelines to train obligated entities on provisions related to the response to requests for access to public information, characterization of citizens, users and interested parties, information management tools and the construction of a Document Management Program¹²⁴.

In terms of measuring the implementation of Law 1712, the Attorney General's Office also designed the Active Transparency Index¹²⁵ that is applied to traditional obligated subjects,

¹²² Supervision requests are made to the Attorney General's Office through the following link:

<https://www.procuraduria.gov.co/SedeElectronica/tramites/tramite.do?formAction=btShow&t=50011&s=0#no-back-button>.

¹²³ More Information More Rights. (2018). *Resultados Veeduría Ciudadana a la Ley de Transparencia y del Derecho de Acceso a la Información Pública*. Retrieved from Más Información Más Derechos Website: <https://masinformacionmasderechos.co/ley-de-transparencia/resultados/>. Access: August 9, 2021.

¹²⁴ This applies to both traditional and non-traditional regulated entities. However, there is no evidence of strategies to monitor the existence of these in non-traditional reporting parties.

¹²⁵ Office of the Attorney General of the Nation. (2019). Active Transparency Index, 2019 Measurement: <https://www.procuraduria.gov.co/portal/media/file/Resultados%20Medicion%20ITA%202019.pdf>. Access: August 9, 2021.

non-traditional obligated subjects¹²⁶ and political parties, and in which compliance with the publication of information required by the Law is measured. By evaluating 3243 obligated subjects in 2019, the results indicate that:

- Only 7.5% obtained the maximum score of 100.
- 35% obtained between 80 and 99 points.
- 27.4% obtained between 51 and 79 points.
- 30.1% obtained scores below 50 points.

There is still no official evaluation regarding passive transparency. However, for 2015 and 2016, Transparencia por Colombia evaluated national entities, departments and comptrollers' offices in this regard. Among its results, the following stands out: at the departmental level, out of 32 requests for information made to governors, only 5 responded to what was requested¹²⁷.

At the national level, Colombia has assumed responsibilities within the framework of initiatives that promote access to information, such as the Open Government Partnership¹²⁸. There have also been some public policy developments. In 2013, document CONPES 167, Comprehensive Anti-Corruption Public Policy, was issued, which included measures for institutional strengthening and promotion of access to information. This policy contemplated activities until 2018.

The CONPES document, entitled "Policy on Transparency, Integrity, Legality, Co-responsibility, and Innovation: Towards an OpenState"¹²⁹ is currently being drafted and includes actions at the national level to promote access to information and the open state approach.

It is noteworthy that, at the local level, Bogotá already has a Public Policy on Transparency, Integrity and No Tolerance of Corruption, which was adopted in 2018¹³⁰, and in Valle del Cauca, the Public Policy on Transparency and Integrity was approved in 2019¹³¹.

The Citizen Oversight Mechanism of Compliance with the Law on Transparency and the Right of Access to Public Information of the alliance *Más Información Más Derechos* has

¹²⁶ Non-traditional regulated entities are those that by their nature were not obliged to publish information or do not usually do so. These include natural or legal persons that provide public functions, public services or manage public resources.

¹²⁷ See TPC. (2017a). *Transparency Index of Public Entities 2015-2016*. Bogotá. Accessed: May 9, 2021.

¹²⁸ More information at: <https://agacolombia.org/>

¹²⁹ Draft document available at : [https://www.dnp.gov.co/CONPES/Documents/2021-09-01%20Documento%20CONPES%20Transparencia](https://www.dnp.gov.co/CONPES/Documents/2021-09-01%20Documento%20CONPES%20Transparencia%20Integridad-y-no-tolerancia-a-la-corupcion.pdf) VDiscusi%C3%B3n%20p%C3%BAblica.pdf.

¹³⁰ This policy can be consulted at the following link: <http://www.gobiernobogota.gov.co/transparencia/planeacion/participacion-ciudadana/politica-publica-transparencia-integridad-y-no-tolerancia-a-la-corupcion>

¹³¹ This policy can be consulted at the following link. <https://www.valledelcauca.gov.co/loader.php?!Servicio=Tools2&ITipo=viewpdf&id=41616>.

been identifying some advances and also some shortcomings in compliance with the law, such as the lack of promotion of the law to non-traditional obligated parties, and the lack of definition of the requirements for compliance with this law by non-traditional obligated parties, among which are political organizations¹³².

In relation to citizen participation, the Constitution recognizes Colombia as a participatory State, and Article 2 mentions *"the essential purposes of the State are: to serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties enshrined in the Constitution; to facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the Nation"*.

In 2015, Law 1757 was issued, which promotes the right to participate in political, administrative, economic, social and cultural life, and to control political power. This law also regulates the mechanisms for citizen participation established in the Political Constitution and defines additional incentives for participation such as public financing.

The Law also urges public entities to include measures aimed at promoting citizen participation in decisions that affect people. An example of the implementation of these provisions is the *Urna de Cristal* portal where citizens can participate virtually on issues of public interest, give their opinion on government programs and access the accountability of national and territorial entities¹³³. Another example is the *Portal Bogotá Participa*, developed by the Mayor's Office of Bogotá, where citizens can access participatory budgets, carry out citizen consultations and share proposals and causes addressed to the district administration¹³⁴.

Despite the regulatory development and the progress made by the State in the promotion of participation, several challenges persist. A first challenge is to raise awareness among public servants about the importance and scope of citizen participation. In the midst of the investigation of the Transparency Index of Public Entities 2015-2016, it was evidenced that only 54 out of 75 entities at the national level had citizen participation policies, and the opening of spaces for interaction with citizens for the formulation and adjustment of processes was low, since in this indicator, the national entities only reached 25 out of 100 points. In some cases, the entities did not understand participation as a necessary exercise in public management¹³⁵.

¹³² Related to systematization of information, publication of information on websites and the response of information to citizens by entities of the executive and judicial branches and political organizations. The results can be consulted at: <https://masinformacionmasderechos.co/ley-de-transparencia/resultados/>. Access: August 11, 2021.

¹³³ The Urna de Cristal portal is available at: <https://www.urnadecristal.gov.co/>.

¹³⁴ The Bogotá Participa portal is available at: <https://participacion.gobiernoabierto bogota.gov.co/>.

¹³⁵ See TPC. (2017a). *Transparency Index of Public Entities 2015-2016*. Bogotá.

In Colombia, there is evidence of contextual conditions that affect participation. For example, between 2016 and 2019 more than 480 social leaders were assassinated, and in 2018, 1000 protection requests were filed¹³⁶. Among other things, social leaders are being assassinated for their work defending human rights, the environment, the rights of indigenous and Afro-descendant communities and safeguarding their territory from illicit crops¹³⁷.

There have also been cases of censorship and violence against journalists who report cases of corruption in Colombia. The *Fundación Para la Libertad de Prensa*¹³⁸ and Transparencia por Colombia¹³⁹ have made statements on this matter through the studies of the *Monitor Ciudadano de la Corrupción* (Citizen Corruption Monitor).

Good practices

- There is an Access to Information Law with a broad scope covering all public entities and non-traditional obligated subjects that perform public functions or manage public resources.
- The Law details minimum information to be published, mechanisms to request information and tools to guarantee the right.
- Guides and training have been provided by the Secretariat of Transparency and the Attorney General's Office of the Nation, which have promoted improvements in institutional management for access to information.
- There is a broad regulatory framework for the promotion of citizen participation.

Deficiencies

- To date, there is no clear sanctioning regime in place that determines the corresponding penalties for non-compliance with the law on access to public information.
- According to the results of the ITA, territorial level entities do not comply with the obligations of proactive publication of information at the same level as national entities. This may be due to lack of technical capacities, scarce budgets, technological limitations and high personnel turnover in the entities.

¹³⁶ TPC. (2019e). Special: Social Leaders. Retrieved from Transparency for Colombia Website: <https://transparenciacolombia.org.co/2019/07/24/lideressociales/>. Accessed: August 13, 2021.

¹³⁷ Ibid.

¹³⁸ FLIP. (August 7, 2020). *Eight journalists from Magdalena were threatened through a pamphlet*. Retrieved from Foundation for Press Freedom website: <https://flip.org.co/index.php/es/informacion/pronunciamentos/item/2559-ocho-periodistas-de-magdalena-fueron-amenazados-a-traves-de-un-panfleto>. Accessed: August 13, 2021.

¹³⁹ TPC. (May 29, 2019a). *Great concern for Press Freedom and Citizen Participation*. Retrieved from Transparency for Colombia Website: <https://transparenciacolombia.org.co/2019/05/29/gran-preocupacion-por-libertad-de-prensa-y-participacion-ciudadana/>. Accessed August 13, 2021.

- There are no specific regulations for the publication of information by non-traditional regulated entities such as public service companies or contractors that manage public resources.
- The PGN requires greater capacities for the promotion of access to information and the fulfillment of its legally established functions.
- At the moment there is no measurement of compliance with the Law in terms of passive transparency (requests for public information).
- Greater coordination is required between entities with responsibilities for promoting access to information, such as PGN, DAFP, the Secretariat of Transparency, the Ministry of Information and Communication Technologies, the National Administrative Department of Statistics and the General Archive of the Nation.
- Citizen participation in Colombia is high risk, especially in remote areas vulnerable to criminal groups. Assassinations of social leaders have been common in recent years.
- There has been evidence of threats to journalists in the performance of their duties.
- Although the regulatory framework for citizen participation is broad, there is still a need for awareness-raising in public entities and more institutional support to generate conditions for participation.

4.1.10 Art. 11 – Judiciary and Prosecutor General’s Office

In Colombia, the judicial branch is composed of the High Courts (Constitutional Court, Supreme Court of Justice, Council of State and the Superior Council of the Judiciary), the Special Jurisdictions, the local courts and tribunals, the Judicial Disciplinary Commission and the Prosecutor General's Office of the Nation.

In terms of ethics and integrity, these entities are governed by the same regulations as the rest of the public entities in the country. Among them is Law 2013 of 2019, which refers to the declaration of conflicts of interest and assets and income of public officials, and Law 2016 of 2020, which provides provisions related to the National Integrity System.

For this reason, the Judicial Branch adopts ethical guidelines through codes of ethics or integrity¹⁴⁰, which contain principles, values and guidelines related to the adoption of ethical commitments for the integrated management of officials¹⁴¹.

¹⁴⁰ In this regard, the Attorney General's Office has a Code of Ethics in force since 2008. The Code of Ethics of the Judicial Branch, which applies to the entire branch in general, has been in force since 2009. However, according to the directive of the Administrative Department of the Public Function (DAFP), these entities must update these codes in order to implement the new Code of Integrity.

¹⁴¹ However, the mere existence of a code of ethics does not guarantee its application. In the CrimJust project led by Transparencia, it was identified, for example, that the Superior Council of the Judiciary has a Code of Ethics, but this is not widely known among the officials of the judicial branch. At the time of that research

In addition, the judicial branch is guided by the Ibero-American Code of Judicial Ethics, which was adopted in 2012 and is an *"instrument developed within the framework of the Ibero-American Judicial Summit based on the study of the various codes of ethics existing in the region, with the purpose of seeking the best possible judge for our society and conceived as an institutional commitment to excellence and a suitable means to strengthen the legitimacy of the Judiciary"*¹⁴².

In 2017, the Judicial Branch subscribed to the Pact for Integrity and Transparency of the Judicial Branch, in which some commitments are acquired from the statement that *"any manifestation of corruption undermines the dignity of justice"*¹⁴³.

For its part, the Judicial Branch's Sector Development Plan 2019-2022 entitled "Modern Justice With Transparency And Equity"¹⁴⁴, governs the entities of the branch through the provision of strategic pillars on the issues of:

- Modernization, technology and digital transformation;
- Modernization of judicial infrastructure and security;
- Judicial career, human talent development and knowledge management;
- Transformation of the organizational structure, citizens and communications-focused justice;
- Quality of justice;
- Anti-corruption and transparency.

Other measures in this area include the call in 2020 for judicial servants to participate in the course "Ethics and Judicial Function", offered and organized by the Spanish Agency for International Development Cooperation (AECID). The objective of this course was to identify the ethical codes of judges, define appropriate conduct, identify conflicts of interest and share best practices to improve the good image of justice¹⁴⁵.

(year 2018) judges at that time had not received trainings on ethics. TPC. (2019d). *Results of the CrimJust Colombia project, Integrity and Transparency in the Fight against Drug Trafficking in Colombia*. Bogotá. Accessed: August 23, 2021.

¹⁴² Superior Council of the Judiciary. (2012). Ibero-American Code of Judicial Ethics: <https://www.ramajudicial.gov.co/documents/5067224/14519461/Codigo+iberoamericano+de+etica+judicial.pdf/b427d6df-bb07-4f48-9bcd-ad2af389cfaa>. Access: May 20, 2021

¹⁴³ Ibid.

¹⁴⁴ Superior Council of the Judiciary. (2019). Plan Sectorial de Desarrollo Rama Judicial 2019-2022 "Modern Justice with Transparency and Equity": <https://www.ramajudicial.gov.co/documents/10240/26035296/Plan+Sectorial+de+Desarrollo+2019-2022.pdf/1744e358-886d-44ed-96b2-3c319b5ffa99>. Accessed: August 23, 2021.

¹⁴⁵ Judicial Branch. (2020). *Preselection of judicial servants to participate in the course offered by aecid "ethics and judicial function"*. Retrieved from Judicial Branch website: <https://escuelajudicial.ramajudicial.gov.co/noticia/preseleccion-de-servidores-judiciales-para-participar-en-el-curso-ofertado-por-aecid-etica>. Accessed: August 23, 2021.

Despite the measures taken, cases of corruption and undue influence from other branches of government have become evident, such as the scandal known as the "Cartel de la Toga" in which members of the Supreme Court of Justice, through prosecutors, committed bribery and collusion crimes to avoid sanctions and affect criminal investigations¹⁴⁶.

Another case of corruption at the local level is that of a specialized land restitution judge, who in 2016, along with three other officials of his office, allegedly contacted individuals involved in legal proceedings to offer them favorable rulings in exchange for the payment of high sums of money¹⁴⁷.

Additionally, Transparencia por Colombia has spoken out about the conflict of interest between Prosecutor General Francisco Barbosa and the President of the Republic Iván Duque, who have a friendly relationship, which could hinder the investigation processes against President Duque regarding the case of alleged illegal financing of the presidential campaign, known as "Ñeñepolítica". In addition, Transparencia por Colombia has expressed warning about the growing imbalance of powers seen in the different branches of public power, where the executive has been increasing its scope and closeness especially among the heads of several of these entities. It is worth mentioning that Prosecutor Barbosa did not declare his relationship with the President of the Republic as a conflict of interest¹⁴⁸.

Good practices

- The judicial branch is covered by national regulations on integrity codes, conflicts of interest and declarations of assets and income.
- There are plans in place for ethical improvement and the fight against corruption in the judicial branch.

Deficiencies

- The process for the election of the Prosecutor General of the Nation includes the presentation of a short list of three candidates by the President of the Republic. This increases the risk of possible conflicts of interest between the executive branch and

¹⁴⁶ El Espectador. (2018). *The "Cartel de la toga": a scandal still in force*. Retrieved from El Espectador Website: <https://www.elespectador.com/judicial/el-cartel-de-la-toga-un-escandalo-aun-vigente-article-732538/>. Accessed: August 23, 2021.

¹⁴⁷ As a result of a complaint filed by a cattle rancher involved in a land restitution process in which a group of indigenous people claimed one of his farms, the Attorney General's Office opened an investigation against the judicial officials. The rancher was allegedly asked for \$15 million pesos as an advance payment out of a total of \$100 million pesos to rule in his favor in a restitution process of 1800 hectares that was being claimed by indigenous people from Vichada. El Tiempo. (June 10, 2016). *Fiscalía señala que juez de tierras haría parte de red de corrupción*. Retrieved from El Tiempo website: <https://www.eltiempo.com/archivo/documento/CMS-16616961>. Accessed: August 24, 2021.

¹⁴⁸ TPC. (June 8, 2020). 'In view of conflict of interest, Ad Hoc prosecutor in 'Ñeñepolítica' urgently needed: <https://transparenciacolombia.org.co/2020/06/16/ante-conflicto-de-interes-urge-fiscal-ad-hoc-en-nenepolitica/>. Accessed: August 24, 2021.

the Prosecutor General's Office, in cases in which the Congress of the Republic chooses a person close to the President, as has been the case on several occasions.

- There have been conflicts of interest that have not been processed, such as that of the Prosecutor General and President Iván Duque. Both a legal obligation to declare the conflict of interest, and the processing of actual or potential conflicts of interest, as provided by the DAFP and the OECD, are urgently required.
- The existence of a code of integrity does not guarantee its application; as mentioned above, there has been evidence of a lack of knowledge of the code by judicial branch officials.
- The current codes of ethics and good governance of the judicial branch are more than 10 years old since their creation and implementation, and no relevant modifications have been made, such as the adaptation to international standards of codes of ethics, or the implementation of internal dissemination of the document in these entities.

4.1.11 Art. 12 – Private sector transparency

The Anti-Corruption Statute (Law 1474 of 2011)¹⁴⁹ in its article 16 incorporated the crime of private corruption, establishing penalties and fines both for those who offer, promise or grant unjustified benefits, as well as for those who receive them within business corporations, associations or foundations (legal entities). The law also establishes the crimes of disloyal administration (abuse of office causing damages) and misuse of privileged information applicable to private law subjects¹⁵⁰.

In the same line, and as a commitment to join the Organization for Economic Cooperation and Development (OECD), Law 1778 of 2016¹⁵¹, or Anti-Bribery Law, was approved, which defines the sanctioning regime for transnational bribery conducts and dictates provisions to combat this crime in legal persons. This law obliges large companies in the pharmaceutical, mining-energy, information and communications technology, manufacturing and construction infrastructure sectors that do international business to implement a Compliance Program to mitigate the risks of transnational bribery, all within the Business Ethics Program¹⁵².

In accounting matters, the country made the transition to IFRS international accounting standards with Law 1314 of 2009, achieving progress in the quality of the financial

¹⁴⁹ <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43292#1474>.

¹⁵⁰ FGN. (November 2018). *Typologies of corruption in Colombia. Volume 8*. Retrieved from <https://www.fiscalia.gov.co/colombia/wp-content/uploads/Tomo-VIII.pdf>. Accessed August 16, 2021.

¹⁵¹ Law 1778 of 2016. Whereby rules are issued on the liability of legal persons for acts of transnational corruption and other provisions are issued in the fight against corruption": <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=67542>.

¹⁵² Ibid.

statement reports of large, medium and small companies, allowing the country to adhere to the best international standards and strengthen the already existing Codes of Ethics¹⁵³.

Furthermore, from the Executive Branch, the Secretariat of Transparency has been implementing the Business Integrity Routes, a program aimed at *"increasing ethical standards in the most important economic sectors of the country"*¹⁵⁴. Through voluntary pacts, companies commit to implement transparency, ethics, compliance and sustainability practices that contribute to the fight against corruption in the private sector.

Within the framework of these agreements, the Secretariat also offers advice for the evaluation of companies' compliance programs, technical assistance for the strengthening of corruption risk control and the implementation of good business practices. To date, companies from 52 of the country's economic associations have joined the program¹⁵⁵.

While progress is important for the fight against corruption in the private sector, bribery remains a common practice in the business environment, hindering competitiveness and reputation within companies' stakeholders. According to the results of the National Survey on Anti-Bribery Practices in Colombian Companies, conducted by Transparencia por Colombia and Universidad Externado in 2017, 96% of businessmen perceive that bribes are offered in the business environment. Likewise, respondents indicated that "the main obstacles to achieving greater transparency in the business environment are corruption in the public sector (37%) and unfair competition (33%). In addition, the percentage of bribery estimated to be necessary to win a contract is 16.7% of its value¹⁵⁶.

Another of the most relevant results of the survey is that *"54% of the companies do not have a confidential reporting channel for employees and third parties who wish to report possible cases of bribery"*¹⁵⁷. In addition, regarding the types of bribery, it is noteworthy that 51% of businessmen consider contributions to finance political campaigns to be bribes.

Moreover, in a measurement carried out by Transparencia por Colombia in 2020 with a sample of around 30 companies in Colombia, it inquired about the importance of knowing the beneficial owner of the companies and the degree of participation of beneficial ownership in the websites, of which 26 companies responded that they do not publish anything on their official website about beneficial ownership while the other 4 did not

¹⁵³ Actualícese. (2019). *10 years of Law 1314 of 2009: how has the accounting scenario changed after its issuance?* Retrieved from <https://actualicese.com/10-anos-de-la-ley-1314-de-2009-en-que-ha-cambiado-el-escenario-contable-luego-de-su-expedicion/>. Accessed: August 16, 2021.

¹⁵⁴ Secretariat of Transparency. (2021). *Business Integrity Guidelines*. Retrieved from <http://www.secretariattransparencia.gov.co/politica-publica/rutas-integridad>. Accessed: September 17, 2021.

¹⁵⁵ Ibid.

¹⁵⁶ TPC. (2017b). *Fifth National Survey of Anti-Bribery Practices in Colombian Companies*. Retrieved from <https://transparenciacolombia.org.co/2017/12/01/quinta-encuesta-nacional-de-practicas-contra-el-soborno-en-empresas-colombianas/>. Accessed: May 20, 2021.

¹⁵⁷ Ibid.

respond¹⁵⁸. This suggests that the companies do not have a regulation that obliges them to indicate who the persons are that have the highest percentage or control in the companies, which is information which continues to be opaque to civil society.

It is worth mentioning Bill 341 of 2020, which is currently undergoing its first debate in the Colombian Congress. The purpose of this bill is to improve the protection of whistleblowers for acts of corruption and to strengthen the administrative liability of companies involved in acts of this type, including sanctions ranging "*from fines, inability to contract with the State, to liquidation*"¹⁵⁹. The strengthening of the sanctioning regime for companies and legal entities included in the bill is a response to the role played by the private sector in major corruption scandals in the country and the continent, as illustrated by the Odebrecht corruption case¹⁶⁰.

In addition, Colombia does not have regulations governing the existence and operation of whistleblower channels in the private sector that guarantee minimum security conditions for workers and outsiders who report suspected acts of corruption.

In terms of access to information, there is no specific regulation that applies to private sector companies, because although Law 1712 on Access to Public Information provides general guidelines for the publication of information for legal entities that manage public resources, specific obligations for the private sector must be regulated.

Finally, civil society created the Business Commitment to Anti-Corruption initiative led by Transparencia por Colombia, which aims to integrate allies in the promotion of best anti-corruption business practices¹⁶¹. One of its objectives is to promote good practices for the financing of political campaigns, promoting transparency and integrity in these scenarios and proactively publishing financing information¹⁶².

Good practices

- By law, companies must implement business ethics programs for the prevention of conduct provided for in Article 2 of Law 1778 of 2016.

¹⁵⁸ TPC. (2021a). *Anti-Corruption Business Commitment*. Retrieved from <https://transparenciacolombia.org.co/que-hacemos/empresa-sector-privado/compromiso-anticorrupcion/>. Accessed: September 18, 2021.

¹⁵⁹ *Draft law 341*. (2021). Retrieved from Por medio de la cual se adoptan medidas en materia de transparencia, prevención y lucha contra la corrupción y otras disposiciones: <http://www.secretariatransparencia.gov.co/politica-publica/proyecto-de-ley-341-de-2020>.

¹⁶⁰ Semana. (2019). *Corruption: Odebrecht case*. Retrieved from Semana Magazine Website: <https://especiales.semana.com/la-serie-de-odebrecht-escandalo-de-corrupcion-en-colombia-por-maria-jimena-duzan/index.html>. Accessed: August 18, 2021.

¹⁶¹ See TPC. (2021a). *Anti-Corruption Business Commitment*.

¹⁶² TPC. (2021b). *Best practices for campaign finance*. Retrieved from <https://transparenciacolombia.org.co/2021/01/29/buenas-practicas-para-el-financiamiento-de-campanas/>. Accessed: August 18, 2021.

- There are many collective action initiatives aimed at strengthening integrity in the business sector.

Deficiencies

- There is no clear regulation for the publication of information in the private sector that manages public resources, in accordance with the obligations of Law 1712 on Access to Public Information of the Ministry of Economy and Finance of 2014.
- There are no easily accessible whistleblower channels that guarantee security conditions in the private sector. Their development and implementation still need to be regulated.
- Although there is a debate on whistleblower protection, most companies do not have comprehensive whistleblower protection for reporting acts of corruption, which can lead to retaliation and affect the whistleblower's personal and family life.

4.2 Chapter V

4.2.1 Art. 14¹⁶³, 52 and 58 – Anti-money laundering

Money laundering is a crime typified by Article 323 of the Colombian Criminal Code (Law 599 of 2000¹⁶⁴), and has 64 underlying offenses. In order to go deeper into the provisions of the Criminal Code, the following regulations may be mentioned: Law 526 of 1999¹⁶⁵ which creates the Financial Analysis Unit (UIAF), Law 1121 of 2006¹⁶⁶ which dictates rules for the fight against terrorism and its financing, Law 1186 of 2008¹⁶⁷ which approves GAFISUD (today GAFILAT), Law 1708 of 2014¹⁶⁸ which establishes the new code of Extinction

¹⁶³ Although this article is part of Chapter II, it was included in Chapter 5, given the coherence of the topics covered.

¹⁶⁴ *"Whoever acquires, safeguards, invests, transports, transforms, stores, conserves, guards or administers assets that have their mediate or immediate origin in activities of migrant smuggling, human trafficking, extortion, illicit enrichment, extortive kidnapping, rebellion, arms trafficking, trafficking of minors, financing of terrorism and administration of resources related to terrorist activities, trafficking of toxic drugs, narcotics or psychotropic substances, crimes against the financial system, crimes against the public administration, smuggling, smuggling of hydrocarbons or their derivatives, customs fraud or favoring and facilitating smuggling, favoring and facilitating smuggling of hydrocarbons or their derivatives, in any form, or linked to smuggling of hydrocarbons or their derivatives, in any form, or linked to smuggling of hydrocarbons or their derivatives in any form, smuggling of hydrocarbons or their derivatives, customs fraud or favoring and facilitating smuggling, favoring smuggling of hydrocarbons or their derivatives, in any of its forms, or linked to the proceeds of crimes executed under a conspiracy to commit a crime, or gives the goods coming from such activities the appearance of legality or legalizes, hides or conceals the true nature, origin, location, destination, movement or right over such goods, shall incur for such conduct alone, imprisonment of ten (10) to thirty (30) years and a fine of one thousand (1,000) to fifty thousand (50,000) years and a fine of one thousand (1,000) to fifty thousand (50,000) years.000) to fifty thousand (50,000) legal monthly minimum wages in force"* Law 1762. (2015). Whereby instruments are adopted to prevent, control and punish smuggling, money laundering and tax evasion:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65338#:~:text=The%20present%20law%20has%20by,of%20assets%20and%20tax%20fraud%20>.

¹⁶⁵ Law 526. (August 12, 1999). Whereby the Financial Information and Analysis Unit is created:

<http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1661995>.

¹⁶⁶ Law 1121. (December 29, 2006). Whereby rules are issued for the prevention, detection, investigation and sanction of the financing of terrorism and other provisions:

http://www.secretariasenado.gov.co/senado/basedoc/ley_1121_2006.html.

¹⁶⁷ Law 1186. (April 14, 2008). Whereby the "Memorandum of Understanding between the Governments of the States of the Financial Action Task Force of South America against Money Laundering (Gafisud)", signed in Cartagena de Indias on December 8, 2000, the "Modification to the Memorandum of Understanding between the Governments of the States of the Financial Action Task Force of South America against Money Laundering (Gafisud)", signed in Santiago de Chile on December 6, 2001, and the "Modification to the Memorandum of Understanding between the Governments of the States of the Financial Action Task Force of South America against Money Laundering (Gafisud)", signed in Santiago de Chile on December 6, 2001, and the "Modification to the Memorandum of Understanding between the Governments of the States of the Financial Action Task Force of South America against Money Laundering (Gafisud)" signed in Brasilia on July 21, 2006: <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1661995>.

¹⁶⁸ Law 1708. (January 20, 2014). Whereby the Code of Extinction of Ownership is issued: http://www.secretariasenado.gov.co/senado/basedoc/ley_1708_2014.html.

of Ownership, Law 1762 of 2015¹⁶⁹ known as the Anti-smuggling Law and against other crimes as a source of money laundering, and Law 1908 of 2018¹⁷⁰ which is established as a law to strengthen the investigation against criminal organizations.

Similarly, Article 345 of Law 1762 of 2015, indicates that whoever directly or indirectly provides, collects, delivers, receives, administers, contributes, safeguards or keeps funds, goods or resources, or performs any other act that promotes, organizes, supports, maintains, finances or economically sustains organized crime groups, illegal armed groups or their members, or national or foreign terrorist groups, or national or foreign terrorists, or terrorist activities, shall incur a prison term of thirteen (13) to twenty-two (22) years and a fine of one thousand three hundred (1,300) to fifteen to fifteen thousand (15,000) years legal monthly minimum wages in force.

Colombia has a number of entities in charge of preventing and combating money laundering and terrorist financing, including the Superintendency of Finance, the Financial Analysis Unit (UIAF), the National Tax and Customs Directorate (DIAN), the Agency of the Inspector General of Taxes, Revenues and Parafiscal Contributions (ITRC), and the Tax and Customs Police (POLFA).

Among the functions of the two main entities working on the issue, the Superintendency of Finance and the UIAF, are:

The Superintendency of Finance performs oversight and control tasks in accordance with the provisions of the Organic Statute of the Financial System, and requires that the supervised entities have policies or procedures to know and verify the identity of their potential customers, in order to identify relevant information for proper risk management¹⁷¹. Among these mechanisms is the Asset Laundering and Terrorist Financing

¹⁶⁹ Law 1762. (July 6, 2015). Whereby instruments are adopted to prevent, control and punish smuggling, money laundering and tax evasion:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65338#:~:text=La%20presente%20presente%20ley%20tiene%20por,de%20activos%20y%20y%20defraudaci%20defraudaci%C3%B3n%20fiscal.>

¹⁷⁰ Law 1908. (July 9, 2018). Strengthening the investigation and prosecution of criminal organizations, adopting measures to bring them to justice and other provisions:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=87301.>

¹⁷¹ Banks, money service companies, money transfer service providers, exchange offices, mortgage providers, among other supervised entities "are obliged to adopt "appropriate and sufficient" control measures, oriented to avoid that in the performance of their operations they may be used as an instrument for the concealment, handling, investment or use in any form of money or other assets coming from criminal activities or destined to their financing, or to give the appearance of legality to them, investment or use in any form of money or other goods coming from criminal activities or destined to their financing, or to give the appearance of legality to them, also complying with the requirements of the international standards set forth in the 40 recommendations of the Financial Action Task Force (FATF), in this matter" Superfinancial Supervision. (2021). Right of petition 2021085201-001-000. Bogotá. Retrieved 2021 April 28.

Risk Management System (SARLAFT),¹⁷² which is used to prevent the use of assets derived from criminal activities and the channeling of resources to terrorist activities.

In accordance with the provisions of Law 795 of 2003, the Superintendency of Finance is also responsible for imposing dissuasive sanctions for non-compliance with the obligations¹⁷³ regarding the fight against money laundering, prevention of the risk of money laundering and financing of terrorism.

To strengthen the exercise of its functions, the Superintendency of Finance uses national and international agreements and memoranda of understanding to prevent and mitigate money laundering. These memoranda of understanding are regulated by CSICLA¹⁷⁴, which also includes the Ministry of Justice, Ministry of Finance, Ministry of Defense, FGN and the Vice-Presidency of the Republic.

The Financial Analysis Unit (UIAF)¹⁷⁵ is the financial intelligence agency that leads the fight against money laundering and the financing of terrorism, and its actions are directly related to the international standards that regulate the subject, by accepting recommendation 29 of the FATF's 40 recommendations.

The UIAF is also in charge of receiving information related to foreign exchange transactions of the subjects supervised by the Superintendence of Finance and foreign exchange professionals in Colombia. This information is stored in the entity's databases, and is used for the corresponding investigations to trace capital potentially involved in money laundering and/or terrorist financing crimes.

The UIAF communicates any relevant information and information they are authorized to share with them to the competent authorities and to the entities entitled to exercise the

¹⁷² SARLAFT consists of two phases, namely: the first, which corresponds to risk prevention and whose objective is to prevent the introduction into the financial system of resources from activities related to money laundering and/or the financing of terrorism (hereinafter, ML/FT); and the second, which corresponds to control and whose purpose is to detect and report operations that are intended to be carried out or have been carried out, in an attempt to give the appearance of legality to operations related to ML/FT.

¹⁷³ One of these prohibitions is to initiate or continue a transnational correspondent relationship with shell banks. Shell bank: A financial institution that: (i) has no physical presence in the country in which it is incorporated and licensed, (ii) does not belong to a financial conglomerate that is subject to comprehensive and consolidated supervision by this Superintendency, and (iii) is not subject to inspection, surveillance and/or control or an equivalent degree of supervision, by the supervisor of the jurisdiction where it is domiciled.

¹⁷⁴ The Interinstitutional Coordination Commission for the Control of Money Laundering (CCICLA) is the advisory body of the National Government and coordinating entity of the actions developed by the State to combat money laundering and the financing of terrorism, created in 1995 by Decree 950 of 1995 and modified by Decrees 754 of 1996, 200 of 2003 and Decree 3420 of 2004.

¹⁷⁵ In addition to being the agency that receives reports of money movements in the country, its investigative function is carried out by a strategic analysis sub-directorate and an operational analysis sub-directorate, the first of which is in charge of designing large-scale strategies to understand the economic dimension of money laundering and its source crimes, such as the threat of drug trafficking or corruption, while the operational analysis sub-directorate carries out a more technical analysis based on the intelligence of cases and findings detected that are involved in money laundering.

action of forfeiture of ownership within the framework of the comprehensive fight against money laundering, terrorist financing, smuggling, customs fraud and activities that give rise to the action of forfeiture of ownership¹⁷⁶.

Within the framework of the alerts that the UIAF is in charge of, Suspicious Transaction Reports (STRs) are made, that is, the operations carried out by a natural or legal person, which by their number, quantity or characteristics do not fall within the systems and normal business practices of a given industry or sector, and that according to the uses and customs of the activity in question, could not have been reasonably justified¹⁷⁷. Once the suspicious operation is determined, this information must be sent directly and immediately to the UIAF through the Online Reporting System (SIREL). STRs could refer to situations such as:

- Unjustified increase in net worth.
- Falsification (identification, documents, data).
- Front man.
- Impersonations.
- Transaction simulation.
- Relationship with offenders.
- Links with assets of illicit origin.
- Fractionation and/or improper use of cash.

The STRs are completely confidential, and in order to report them there does not have to be a previous certainty of a crime and it does not generate any type of responsibility¹⁷⁸. From this perspective, they are preventive reports that seek to avoid and detect possible irregularities and promote the proper functioning of public and private entities.

The number of STRs has been increasing year by year. In 2017, there were 11760 and in 2020 they were 15744 such reports, with the financial sector as the main reporting source with 7802 reports in 2017 and 10176 in 2020¹⁷⁹.

In this regard, Colombia through Decree 1674 of 2016¹⁸⁰ defined the list of Politically Exposed Persons, who due to the risks associated with their positions and functions must

¹⁷⁶ See *Law 1762, 2015*.

¹⁷⁷ Financial Analysis Unit. (2012). What you should know about asset laundering and terrorism prevention. Colombia:

https://www.uiaf.gov.co/sala_prensa/publicaciones/documentos_uiaf/lo_debe_saber_lavado_activos_27734. Accessed: September 1, 2021.

¹⁷⁸ See Financial Analysis Unit. (2012).

¹⁷⁹ See Annex. Statistics on Money Laundering. Information obtained through a request for information to the Financial Information and Analysis Unit.

¹⁸⁰ *Decree 1674 of 2016*. Whereby a chapter is added to Title 4 of Part 1 of Part 1 of Book 2 of Decree 1081 of 2015, "whereby the Sole Regulatory Decree of the Sector of the Presidency of the Republic" is issued, ...: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=77496>.

be treated as special subjects of the financial system and other subjects who make Suspicious Transaction Reports.

Finally, to combat money laundering and other crimes, in 2007 the Prosecutor General's Office, the Attorney General's Office and the Comptroller General's Office signed and updated the inter-administrative agreement to strengthen the mechanisms to combat this scourge, as well as the investigation, prosecution and prevention activities that are carried out by different entities. In addition, the Prosecutor General's Office and UIAF have an agreement that allows for the identification of financial behavior of individuals both in the national territory and in countries with which UIAF has agreements.

According to data from the United Nations Office on Drugs and Crime, cited by the *Western Hemisphere Drug Commission*¹⁸¹, money laundering in Colombia accounted for around 5.4% of the GDP of 2017, or approximately \$17 billion. This may be due to the prevalence of highly lucrative criminal activities such as drug trafficking, illegal logging, wildlife trafficking and illegal mining.

In Colombia, smuggling continues to be a common modality for laundering the proceeds of drug trafficking and other crimes associated with organized crime, and risks persist such as the *"absence or weakness of external control mechanisms over goods and the exposure of personnel to illegal actors who have an interest in the customs operation, allowing to control the outflow of illicit drug shipments"*¹⁸², the lack of police presence in customs areas, the use of "swallow capital" as a means to launder money and the laxity in the control of internet-operated games, which entails a high risk for money laundering¹⁸³.

Another weakness in the implementation of anti-money laundering actions is the lack of congruence of strategies with GAFILAT risk approaches: *"AML/CFT¹⁸⁴ supervisory systems and tools are not fully in line with the risk-based approach and there are significant gaps in the supervision of designated non-financial activities and professions"*¹⁸⁵.

¹⁸¹ WHDPC. (2020). *Western Hemisphere Drug Policy Commission Report*. Washington: <https://whdpc.org/images/report/2021%2001.21%20WHDPC%20FINAL%20REPORT.pdf>. Accessed: September 3, 2021.

¹⁸² See TPC. (2021f). *Fight against Corruption and Drug Trafficking in Colombia*. P. 32.

¹⁸³ Ibid.

¹⁸⁴ Anti-Money Laundering and Combating the Financing of Terrorism.

¹⁸⁵ Among GAFILAT's recommendations are to *"Improve implementation of risk mitigation measures, including enhanced measures and fully extend AML/CFT requirements to sectors that are wholly or partially out of scope, including unregulated lenders, online casinos, real estate brokers, lawyers, accountants and dealers in precious metals and stones and Articulate a national AML/CFT policy with clear objectives, timelines and designation of responsibilities, as well as a mechanism to monitor/measure progress and maintain more comprehensive statistics."* GAFILAT. (2019). *Colombia Mutual Evaluation Report*. P. 10. https://www.uiaf.gov.co/asuntos_internacionales/resultados_evaluaciones_mutuas/cuarta_ronda/informe_evaluacion_mutua_29934&download=Y. Accessed: September 6, 2021.

Good practices

- There are robust regulations, subject to international commitments such as FATF, which allow public entities to work together to fight money laundering.
- Early alerts are issued on STRs to facilitate the recognition of a possible money laundering or terrorist financing operation that has been identified as a method adopted by criminals to launder assets or finance terrorism.
- The Superintendency of Finance has measures in place to prevent money laundering and financing of terrorism, as well as to prevent the entry into the country of fictitious entities such as shell banks that may be involved in these crimes.

Deficiencies

- Supervisory systems and tools are not aligned with the risk approach and there are gaps in the various activities performed among the different regulatory bodies.
- There is a high propensity for the laundering of assets and money laundering, considering that they are a link in a chain of illegal acts that the country is immersed in and that permeate different spheres of power and civil society, in addition to refinancing illicit activities such as drug trafficking.
- The participation of illegal actors such as money laundering networks, armed groups, organized crime, etc., in complex corruption networks ends up affecting actors that are part of the different branches of power, control bodies, public prosecutors' offices and private entities, which, from their sphere of influence, promote the occurrence of acts of corruption.

4.2.2 Art. 53, 54 and 56 – Measures for direct recovery of property and confiscation tools

Article 58 of the Political Constitution of Colombia seeks to maintain clear criteria on the guarantees of private property and the possible seizure of property, "*private property and other rights acquired in accordance with civil laws, which may not be disregarded or violated by subsequent laws. (...). For reasons of public utility or social interest defined by the legislator, property may be seized by judicial sentence and prior compensation. Such compensation shall be fixed in consultation with the interests of the community and the affected party. In the cases determined by the legislator, such seizure may be carried out through administrative channels, subject to subsequent contentious-administrative action, including with respect to the price*¹⁸⁶.

Law 1708 of 2014 states that the forfeiture of ownership is made by court judgment and occurs when there is an unjustified increase in assets, at any time, without explaining the lawful origin thereof, when the asset or property in question come directly or indirectly from an unlawful activity, when the assets in question have been used as a means or

¹⁸⁶ See Political Constitution (1991).

instrument for the commission of unlawful activities, are destined to these or correspond to the object of the crime, when the goods or resources in question come from the alienation or exchange of others that have their origin, directly or indirectly, in illicit activities, or that have been destined to illicit activities or are the product, effect, instrument or object of the illicit activity, and finally, when the assets in question have a licit origin, but have been mixed, integrated or confused with resources of illicit origin.

Now, confiscation is prohibited in Colombia¹⁸⁷. This is a sanction expressly forbidden by the Constitutional Order, because as a retaliation it allowed the dispossession of all or part of the assets of those who led a criminal act, and in this context it differs from the extinction of ownership in that in the latter there is no political connotation as a presupposition, but the commission of a crime; while confiscation touches assets without any link to the crime, the extinction of ownership affects assets directly or indirectly linked to punishable behaviors¹⁸⁸.

Forfeiture proceedings usually take excessive time due to the country's judicial congestion, which by 2020 reached 62.4%¹⁸⁹. The State assumes the administration of the assets while the judicial ruling is issued and thus allocates them to social investment. However, the costs of administration and maintenance for a prolonged period of time are usually more expensive for the State than the royalties produced by the assets themselves, therefore, a cost-benefit analysis should be made in order to establish the efficiency of these processes and that they do not mean an economic loss for the State¹⁹⁰.

Other difficulties inherent to the investigations are the lack of evidentiary material, the influence of third parties to affect judicial processes and the lack of security conditions for reporting.

¹⁸⁷ "ARTICLE 34. Penalties of banishment and confiscation are prohibited. Notwithstanding, by judicial sentence, the ownership of property acquired through illicit enrichment, to the detriment of the Public Treasury or with serious deterioration of social morality shall be declared extinguished." Legislative Act 01. (2020). Retrieved from <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=136391>.

¹⁸⁸ Montenegro, L. H. (2009). Equivalent assets and the risk of confiscation in the Extinguishment of Domain Law and criminal forfeiture. *Via Juris*, 71-89. Retrieved from: <https://www.redalyc.org/articulo.oa?id=273920944006>. Accessed: September 7, 2021.

¹⁸⁹ LSA. (2021). *Index of Congestion of the ordinary jurisdiction in Colombia*. Retrieved from Corporación Excelencia en la Justicia: <https://cej.org.co/indicadores-de-justicia/efectividad/indice-de-congestion-de-la-jurisdiccion-ordinaria-en-colombia/>. Accessed: September 7, 2021.

¹⁹⁰ In spite of this, the Attorney General's Office by the end of 2020 reported precautionary measures to 8,071 assets whose value exceeds 12 billion pesos, being, according to the entity, the year with the highest results in forfeiture of ownership due to the appraisal of the properties. FGN. (2020b). *Assets for more than 12 trillion pesos were affected for purposes of forfeiture of ownership in 2020*. Retrieved from Website of the Attorney General's Office: <https://www.fiscalia.gov.co/colombia/noticias/bienes-por-mas-de-12-billones-de-pesos-fueron-afectados-con-fines-de-extincion-de-dominio-en-2020/>. Accessed: September 7, 2021.

Finally, it is worth mentioning that in Colombia there is a lack of progress in legislation aimed at identifying and assessing the damage caused by acts of corruption, identifying the victims and consequently leading to their reparation¹⁹¹.

Good practices

- Colombia has a consolidated crime policy, focused on punishing those who possess the proceeds of a crime, thus providing the basis for the forfeiture action for confiscation by the corresponding entities.

Deficiencies

- Forfeiture proceedings usually take an excessive amount of time due to judicial congestion in the country; therefore the State assumes the administration of the assets while the judicial ruling is issued and thus allocates them to social investment.
- The assets received through the precautionary measure and judicial decision may harm the owner in case of proving that he obtained them legally, since the goods lose their commercial value to such an extent that they deteriorate due to lack of maintenance and may cause economic damages.
- Confiscation tools in Colombia entail economic cost overruns for the State, since the seized goods may generate high maintenance expenses while the corresponding investigation is being carried out.
- Colombia does not have tools through which citizens can access information regarding the administration of assets subject to forfeiture of ownership.

4.2.3 Art. 51, 54.1(a) and (b), 54.2, 55.1, 55.2, 55.6, 56, 59 – International cooperation for the purpose of confiscation

Colombia has international cooperation measures¹⁹² for the identification, freezing, seizure or confiscation of the proceeds resulting from the commission of the crime of money laundering, the proceeds of the underlying crime, the assets used for the commission of such conduct or those that have been mixed or transformed with other goods of lawful

¹⁹¹ TPC. (2020e). *The reparation of victims of corruption in Colombia: approach, exploration of legal route and elements for an appraisal methodology*. Retrieved from Transparency for Colombia website: <https://transparenciacolombia.org.co/2020/02/02/reparacion-victimas-corrupcion/>. Accessed: September 8, 2021.

¹⁹² International Judicial Cooperation is a mechanism aimed at obtaining collaboration or mutual assistance between States, allowing national authorities to manage proceedings in foreign or requested territory and integrate them into the judicial or administrative process of their state. It finds legal support in bilateral or multilateral international instruments and in the absence of these in domestic law. Therefore, in order to make use of international cooperation, each country must verify the existence of international instruments such as treaties, conventions, agreements and memorandums of understanding, among others, and based on their postulates, submit the request for mutual legal assistance. GAFILAT. (2015). *Guide to International Judicial Cooperation in Asset Recovery*. Bogotá:

https://www.unodc.org/documents/colombia/2017/Enero/UNODC_Guia_C.I.R.A._RRAG_2015.pdf. Accessed: September 8, 2021.

origin, as well as equivalent goods. In order to comply with the above, the country has adopted the precepts to prevent and combat money laundering, through GAFILAT, in which national policies are proposed to combat such problems and encourage mechanisms for cooperation among the States that are part of this group.

In order to properly and effectively exercise international cooperation, Law 800 of 2003¹⁹³ was enacted to promote cooperation to prevent and combat transnational organized crime more effectively, so that income or other benefits derived from the proceeds of crime, from property into which the proceeds of crime have been transformed or converted, or from property with which the proceeds of crime have been intermingled, may also be subject to the measures provided for confiscation, regardless of the State where they are located¹⁹⁴.

Similarly, the paragraph of article 489 of Law 906 of 2004¹⁹⁵ establishes that any measure issued abroad that implies loss or suspension of the dispositive power over assets may be executed in Colombia. Once the request is received, it is brought to the attention of the Prosecutor General's Office so that it may determine whether it is appropriate and forward it to the competent judge to be resolved by means of a sentence¹⁹⁶.

It is worth mentioning that formal mechanisms of international judicial cooperation are chosen under the parameters contemplated in the Inter-American Convention on Letters Rogatory¹⁹⁷. The aforementioned Convention is intended for civil or commercial matters; however, the States Parties may extend these formal cooperation mechanisms to criminal matters. It applies without prejudice to the provisions of the conventions on the subject that have been signed bilaterally or multilaterally or to the most favorable practices established by the member countries of the Asset Recovery Network of GAFILAT in this regard¹⁹⁸.

Colombia has numerous agreements on assets. At the multilateral level there are the following: Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

¹⁹³ Law 800 (2003). Whereby the "United Nations Convention against Transnational Organized Crime" and the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime", adopted by the General Assembly of the United Nations on November fifteenth (15), two thousand (2000), are approved. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=15011>.

¹⁹⁴ Ibid.

¹⁹⁵ Law 906. (2004). Whereby the Code of Criminal Procedure is issued. (Corrected in accordance with Decree 2770 of 2004): <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=14787>.

¹⁹⁶ Ibid.

¹⁹⁷ OAS. (1975). *Inter-American Convention on Letters Rogatory*. Retrieved from Organization of American States website: INTER-AMERICAN CONVENTION ON MANDATES OR LETTERS ROGATORY: http://oas.org/juridico/spanish/tratados/sp_conv_interame_exhort_carta_roгато.pdf. Accessed: September 10, 2021.

¹⁹⁸ Brun et al. (2011). *Handbook for Asset Recovery - A practitioner-oriented guide*. Washington: Gondo Editions. P. 156: <https://openknowledge.worldbank.org/bitstream/handle/10986/2264/594640PUB0SPAN00Box379863B00PUBLIC0.pdf?sequence=43&isAllowed=y>. Accessed: July 11, 2021

Vienna. 1988; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. Strasbourg. 1990; Inter-American Convention on Mutual Assistance in Criminal Matters. Nassau. 1992; Inter-American Convention against Corruption. Caracas. 1996; International Convention for the Suppression of the Financing of Terrorism. 1999; Convention against Transnational Organized Crime. Palermo. 2000; Convention against Corruption. Merida. 2003¹⁹⁹.

At the bilateral level, the main ones are listed below:

- **United States:** there is an agreement to share confiscated proceeds and instrumentalities of crime, based on the articles of the United Nations Convention against Transnational Organized Crime, which state that confiscation and forfeiture shall take place following a court-imposed decision, following a judicial proceeding in relation to a criminal offense or criminal offenses (including non-conviction based forfeiture) involving the permanent deprivation of assets, or a sum of money equivalent to the value of the assets, for the benefit of one of the parties. Consequently, there will be a permanent deprivation of such assets²⁰⁰.
- **Argentina:** The treaty is called the Agreement on Mutual Assistance in Criminal Matters between the Republic of Argentina and the Republic of Colombia and dates back to 1997. Article 16 of this treaty establishes that the assistance includes the tracing of the proceeds or instrumentalities of crime, as well as measures aimed at preventing the transaction, transfer or alienation of such property. Likewise, assistance may be oriented to determine the good faith of the third party, when the convicted person has disposed of the proceeds or instrumentalities of crime. Confiscation and provisional measures are Articles 17 and 18, which establish the procedure for the execution of the preventive seizure, seizure or preliminary confiscation, as well as for the definitive confiscation²⁰¹.
- **Brazil:** Agreement on Judicial Cooperation and Mutual Assistance in Criminal Matters between the Federated Republic of Brazil and the Republic of Colombia. This agreement, signed in 1997, establishes in Article 18 that the parties may enter into agreements related to cooperation for the enforcement of final measures on

¹⁹⁹ UNODC. (2016). *The extinction of the right of dominion in Colombia*. Retrieved from UNODC Website: https://www.unodc.org/documents/colombia/2017/Marzo/La_extincion_del_derecho_de_dominio_en_Colombia.pdf. Accessed: September 10, 2021.

²⁰⁰ Ministry of Foreign Affairs. (November 21, 2016). *Between the Government of the Republic of Colombia and the Government of the United States of America Concerning the Sharing of Confiscated Proceeds and Instrumentalities of Crime*. Retrieved from Ministry of Foreign Affairs Website: http://apw.cancilleria.gov.co/tratados/AdjuntosTratados/bc06d_eeuu_b-acuerdocomparticiondegananciasdecomisadoseinstrumentosprovenientesdedelitos2016-texto.pdf. Accessed: September 3, 2021.

²⁰¹ *Agreement on Judicial Assistance in Criminal Matters between the Republic of Colombia and the Republic of Argentina*. (1997): https://leyes.co/acuerdo_de_asistencia_judicial_en_materia_penal_entre_colombia_y_argentina.htm.

assets. Moreover, Article 19 indicates that the party that has custody of the instruments, object or fruits of the crime shall dispose of them in accordance with its domestic legislation²⁰².

- **Ecuador:** Agreement on Judicial Cooperation and Mutual Assistance in Criminal Matters between the Republic of Colombia and the Republic of Ecuador signed in 1996. Article 16 establishes the requirements for the request for precautionary measures on property, instruments and proceeds of crime or the equivalent value. Article 17 provides that cooperation in confiscation matters refers to property linked to a criminal proceeding and establishes the possibility of sharing the value of the property when related cases are involved²⁰³.
- **Mexico:** Cooperation Agreement on Legal Assistance between the Government of the United Mexican States and the Government of the Republic of Colombia, signed in 1998. Article XV establishes that the assistance includes the location of the proceeds or instrument of the crime, as well as the measures oriented towards preventing the transaction, transfer or alienation of such property. Likewise, assistance may be oriented to determining the good faith of the third party, when the person convicted of a crime has disposed of the proceeds or instrumentalities of the crime (XV.4). Confiscation measures are Articles XVI and XVII and establish the procedure for the execution of the preventive seizure, seizure or preliminary confiscation, as well as for the definitive confiscation²⁰⁴.
- **Peru:** Cooperation Agreement for the prevention, control and repression of the laundering of proceeds derived from any illicit activity between the Government of the Republic of Colombia and the Government of the Republic of Peru of 2004. Articles X and XI establish the procedure for the execution of provisional and definitive measures on assets. It foresees measures for carrying out investigations, requests for judicial assistance, appearance of persons, request of the parties, establishment of precautionary or definitive measures on assets, and other measures for the laundering of proceeds²⁰⁵.
- **Paraguay:** Cooperation agreement for the prevention, control and stifle of money laundering derived from any illicit activity between the Government of the Republic

²⁰² Agreement on Judicial Cooperation and Mutual Assistance in Criminal Matters between the Republic of Colombia and the Federative Republic of Brazil (1997):

https://leyes.co/acuerdo_de_cooperacion_judicial_y_asistencia_mutua_en_materia_penal_entre_colombia_y_brasil.htm.

²⁰³ Agreement on Judicial Cooperation and Mutual Assistance in Criminal Matters between the Republic of Colombia and the Republic of Ecuador (1999): https://web.oas.org/mla/en/Treaties_B/col_mla_ecu_es.pdf.

²⁰⁴ Cooperation Agreement on Legal Assistance between the Government of the United Mexican States and the Government of the Republic of Colombia. (1998):

https://aplicaciones.sre.gob.mx/tratados/ARCHIVOS/COLOMBIA-ASIST_JCA.pdf.

²⁰⁵ Cooperation Agreement for the prevention, control and suppression of money laundering derived from any illicit activity between the Government of the Republic of Colombia and the Government of the Republic of Peru (2004): http://www.secretariassenado.gov.co/senado/basedoc/ley_1165_2007.html.

of Colombia and the Government of the Republic of Paraguay. This agreement dates back to 1997 and seeks to prevent, control and stifle money laundering between the countries, through commercialization, financial institutions and mobilization of capital. It also seeks the designation of central authorities in charge of submitting and receiving requests related to the agreement, and mechanisms for the exchange of information, cooperation and mutual legal assistance²⁰⁶.

- **Uruguay:** Agreement on judicial cooperation in criminal matters between the Republic of Colombia and the Oriental Republic of Uruguay of 1998. This treaty establishes the fulfillment of other requests with respect to assets, including the eventual transfer of the value of the confiscated assets in a definitive manner. Article 20 provides that whichever of the two States has custody of the instruments, object or proceeds of crime shall dispose of them in accordance with the provisions of its domestic law. To the extent permitted by its laws and on such terms as may be deemed appropriate that this State may share the confiscated property or the proceeds of its sale with the other State. With respect to criminal measures, Article 18 establishes the requirements for the application for shares in the property, instrumentalities and proceeds of crime or their equivalent value²⁰⁷.

According to the Organized Crime Convention, each country must determine which authority is competent to investigate, prosecute and execute requests originating in another country. This Convention deals with criminal justice issues and therefore the territorial jurisdiction for the crimes committed is under the exclusive control of the State²⁰⁸.

It should be added that any request for international cooperation must be submitted on the basis of bilateral treaties and the multilateral agreement must be used. Based on the provisions of these treaties, it is necessary to clearly establish the grounds for refusal of assistance and systematically recognize and use the expertise of the central authority in the matter, since the latter is responsible for the execution of all types of cooperation, and prior discussions with such authorities are essential.

In order to cooperate with international cooperation, the United Nations Office on Drugs and Crime (UNODC) and the Prosecutor General's Office, within the framework of the Crime

²⁰⁶ *Cooperation Agreement for the Prevention, Control and Repression of the Laundering of Assets derived from any illicit activity between the Government of the Republic of Colombia and the Government of the Republic of Paraguay.* (1997):

https://leyes.co/acuerdo_de_cooperacion_para_la_prevenccion_control_y_represion_del_lavado_de_activos_entre_colombia_y_paraguay.htm.

²⁰⁷ *Agreement on Judicial Cooperation in Criminal Matters between the Republic of Colombia and the Oriental Republic of Uruguay.* (1998):

https://leyes.co/convenio_de_cooperacion_judicial_en_materia_penal_entre_colombia_y_uruguay.htm.

²⁰⁸ In some cases, if a national in another cooperating State has committed a criminal offence outside his or her own country, the authorities of the other State may impose jurisdiction over such offences. Indeed, they may be obliged to initiate an independent investigation and prosecution.

Prevention and Strengthening of Justice Program (PROJUST), created a guide document for the investigation of crimes associated with corruption, as well as different documents for the expediting and due treatment by prosecutors, and the different national and international crimes²⁰⁹.

For its part, in 2018 the Superintendency of Companies promoted the signing of memoranda of understanding to facilitate the investigation and prosecution of transnational bribery²¹⁰. Similarly, during 2020 a group was created to promote (...) "*international judicial cooperation and strengthen initiatives to detect and affect the assets of criminal organizations*"²¹¹, which different entities from 12 countries around the world participate in.

Despite these agreements and cooperation actions, Colombia does not have a system that consolidates information on judicial cooperation or that allows public access to such information. However, the different entities have the information corresponding to their functions and responsibilities regarding money laundering and international agreements.

Good Practices

- There are several agreements between different countries that provide guidelines on the management of recovered assets.
- The Colombian State may receive assets from other states when it has contributed to the success of the investigation aimed at the loss of the right of ownership of the assets, subject to such prerogative.

Deficiencies

- As there are different investigation units specialized in asset forfeiture, each of them may hinder the investigation process and interfere in competencies that do not correspond to them.
- There are numerous multilateral treaties and instruments related to asset forfeiture, asset recovery and international judicial cooperation, which renders the application of the rule complex.

²⁰⁹ The investigation guide document for crimes associated with corruption can be consulted at the following link: https://www.fiscalia.gov.co/colombia/wp-content/uploads/Guia_Investigacion.pdf.

²¹⁰ Supersociedades. (2018). *SuperSociedades seeks to expand international cooperation in the fight against corporate corruption*. Retrieved from Superintendencia de Sociedades Website: <https://www.supersociedades.gov.co/Noticias/Paginas/2018/SuperSociedades-busca-expandir-cooperacion-internac-en-lucha-contra-la-corrupcion-empresarial.aspx>. Accessed: September 6, 2021.

²¹¹ FGN. (2020a). *Creation of the Group of Asset Forfeiture and Confiscation of the Public Prosecutor's Offices of Iberoamerica*. Retrieved from Attorney General's Office Website: [https://www.fiscalia.gov.co/colombia/noticias/nace-el-grupo-de-extincion-de-dominio-y-decomiso-de-los-ministerios-de-publicos-de-iberoamerica/#:~:text=Con%20el%20liderazgo%20de%20la,de%20los%20patrimonios%20il%C3%ADcitos%20de](https://www.fiscalia.gov.co/colombia/noticias/nace-el-grupo-de-extincion-de-dominio-y-decomiso-de-los-ministerios-de-publicos-de-iberoamerica/#:~:text=Con%20el%20liderazgo%20de%20la,de%20los%20patrimonios%20il%C3%ADcitos%20de.). Accessed: September 6, 2021.

- There is no system in place to consolidate information on the investigations and results of international cooperation for confiscation and make it publicly available.

5. Recent developments

Over the years, Colombia has endured the problem of corruption in various sectors. According to the Corruption Perceptions Index prepared annually by Transparency International, Colombia has not achieved a significant variation in its ranking since 2012. In other words, for the last 8 years Colombia has obtained only a score ranging between 36 and 39 points, ranking in 92nd place out of 180 countries in 2020²¹². In general, citizens consider that corruption is found in the highest spheres of power and manifests itself in different ways; in addition, those who incur in such criminal acts are not effectively punished²¹³.

In 2018, an anti-corruption consultation was carried out, which was achieved after collecting more than 3 million signatures, verified by the National Civil Registry. Citizens had to go to the polls to answer 7 closed questions which were intended to regulate different crucial aspects to mitigate the risks of corruption in Colombia.

The questions of this consultation addressed aspects such as salary reduction for congressmen and women and high state officials; jail for corrupt people and prohibition to contract again with the State; mandatory transparent contracting throughout the country; public budgets with citizen participation; obligation of accountability of congressmen and women on their attendance, voting and legislative management; making public the properties and unjustified income of elected politicians and extinguishing their domain; and limiting the periods to occupy seats in public corporations. The ballot for the consultation posed the questions in a concise form and the possible answers were YES and NO²¹⁴.

Despite the fact that corruption is one of the main concerns of Colombians, close to 12 million people decided to vote for the proposals of the consultation, but it failed because it did not reach the threshold required to be legally binding. Although 99% of the voters voted in favor of the proposals, the results were not approved due to the lack of approximately 500,000 votes²¹⁵.

After the consultation, the Colombian government held meetings with political parties and citizens to present anti-corruption initiatives to Congress. While some made progress,

²¹² Transparency International. (2021). *Corruption Perception Index 2020*. Retrieved from Transparency International website: <https://www.transparency.org/en/cpi/2020/index/col>. Accessed: August 13, 2021.

²¹³ TPC. (2019f). *Global Corruption Barometer Results for Latin America and the Caribbean 2019*. Retrieved from Transparency for Colombia Website: <https://transparenciacolombia.org.co/2019/09/23/resultados-barometro-global-de-corrupcion-2019/>. Accessed: 17 August 2021.

²¹⁴ Radio Nacional. (August 25, 2018). *These are the seven questions of the anti-corruption consultation*. Retrieved from Radio Nacional de Colombia Website: <https://www.radionacional.co/cultura/estas-son-las-siete-preguntas-de-la-consulta-anticorrupcion>. Accessed August 17, 2021.

²¹⁵ Haman, M. (2019). *The Colombian Anti-Corruption Referendum*. Czech Republic: University of Hradec Kralove. Retrieved from The Colombian Anti-Corruption Referendum: Why It Failed: <https://revistas.uniandes.edu.co/doi/10.7440/colombiaint100.2019.08>. Accessed: September 13, 2021.

others were shelved. As of 2021, of the seven points addressed by the Anti-Corruption Consultation, only four have been approved by means of bills, while the remaining three were sunk by the legislature; while of 9 bills that are not directly related to the Anti-Corruption Consultation, but that do address these issues, only 3 were approved²¹⁶. Counting additional initiatives regarding the fight against corruption, the following legislative initiatives can be mentioned²¹⁷:

The balance of the anti-corruption legislative effort includes the approval of several laws, such as the following:

- Mechanisms for the election of the Comptroller General of the Republic, Law 1904 of 2018.
- Enabling merit processes for the promotion of civil servants, Act 1960 of 2019.
- Reform to the Fiscal Control Regime, Legislative Act 04 of 2019.
- Obligation to publish declarations of assets, income and conflicts, Law 2013 of December 30, 2019.
- Regulation of penalties for offenses committed against the public administration, Law 2014 of December 30, 2019.
- Creation of the National Integrity System in the Colombian Public Service, Law 2016 of February 27, 2020.
- Creation of the register of unfinished works *Blancos*, Law 2020 of July 17, 2020.
- Regulation of Standard Specifications for Public Works, Law 2022 of July 22, 2020.
- Reform to the Disciplinary Code, Law 2094 of 2021.

Finally, in terms of the current situation in the country, Transparencia por Colombia has previously pointed out two elements to consider: *"on the one hand, the economic and social problems of the pandemic and, on the other hand, citizen mobilization and protest. Regarding the first, it is necessary to remember the controversies of corruption in the execution of public resources for the health emergency, which led to a renewed warning about weaknesses in the public procurement system (risks of high concentration of direct contracting, lack of suitability of contractors, overpricing, contracts with financiers, etc.)"*²¹⁸; and regarding the mobilization and citizen protest, *"corruption has been present as an issue in the strikes of 2019 and 2021. Recent surveys ratify the growing dissatisfaction of citizens*

²¹⁶ TPC. (2021g). *What was the balance of the 2020-2021 legislature for anti-corruption projects?* Retrieved from Transparencia por Colombia Website: <https://transparenciacolombia.org.co/2021/07/22/que-balance-dejo-la-legislatura-2020-2021-para-los-proyectos-anticorrupcion/>. Accessed: August 30, 2021.

²¹⁷ TPC. (2021i). *Priority recommendations for the fight against corruption in the period September 2021 to August 2022 - last year of the government of President Iván duque Márquez:* <https://transparenciacolombia.org.co/wp-content/uploads/20210917-recomendaciones-gobierno-nacional.pdf>. Access: September 30, 2021.

²¹⁸ Ibid.

*on the subject and distrust towards institutions that, among other difficulties, face a public service that is not always accessible to citizens and in which there have traditionally been conflicts of interest that call into question the impartiality of decision makers and spending officers"*²¹⁹.

It is necessary to take these aspects into account because in 2022 Colombia will once again enter an election period, where it is necessary to put the fight against corruption back on the table not only as an element of political campaigning but also as a generator of significant changes in institutional performance, efficiency in public spending, correct attention to citizens' needs and the consolidation of the social rule of law.

²¹⁹ Ibid.

6. Recommendations

Preventive anti-corruption policies and practices:

- Promote legislation on whistleblower protection, criminal liability of legal entities for acts of corruption and reparation for damages caused by corruption.
- Establish the obligation for all public entities to define a portion of their budget for the development of anti-corruption actions. In particular, allocate budget for the implementation of anti-corruption legal mandates, including the Anti-Corruption and Citizen Service Plan (PAAC), Law 1474 of 2011 and Law 1712 of 2014, among others.
- Create specialized sectoral policies to address corruption risks in sectors such as health, education and infrastructure.
- The new CONPES on Transparency and Fight against Corruption, which will be the public policy roadmap for the next government, should incorporate citizens' proposals and address in a comprehensive manner, beyond the Open State approach, issues such as the full implementation of the Law, access to information, the development of the institutional anti-corruption architecture, whistleblower protection and public integrity culture²²⁰.

Corruption prevention body or bodies:

- Ensure that the anti-corruption bodies of the Anti-Corruption Statute and the decisions derived from them have a budget, accountability mechanisms and compliance with the law on access to information in all their activities.
- Provide budgetary and administrative independence to the Secretariat of Transparency for the exercise of its functions.
- Strengthen the Secretariat of Transparency in its role as coordinator of public policies to fight corruption, rather than in the individual execution of anti-corruption actions. Similarly, give the Secretariat the capacity to support mechanisms such as the National Commission of Moralization, the Regional Commissions of Moralization and the National Citizen Commission for the Fight against Corruption.

Public sector employment:

- Carry out a general reform of public employment that promotes efficient and merit-based entry into public service, that allows for corrective measures to be taken with respect to administrative career employees, that promotes labor mobility and provides incentives to public servants.

²²⁰ DNP. (2021). Policy of Transparency, Integrity, Legality, Co-responsibility, and Innovation: Towards an Open State. Preliminary unpublished consultation document. Accessed: July 28, 2021.

- Design procedures that consider merit, quality and competence in the selection of contractors for the provision of services and management support.
- Modify the budgetary limitations described in Law 617 of 2000 regarding the operating budget of the entities, in order to provide more resources for hiring staff.
- Join the efforts of the National Civil Service Commission and the Administrative Department of the Civil Service in a general strategic route for the improvement of public employment in the country.

Political financing:

- Promote legislation that obliges political campaign contributors to register their donations, loans or any other type of contribution to parties, movements and candidates (This report must be interoperable with the *Cuentas Claras* application for reporting political campaign income and expenses).
- Strengthen the processes of prevention and detection of illicit money in political campaigns, through regulations on donations from recently created legal entities, the outsourcing of resources and the promotion of citizen scrutiny of elections.
- Promote regulations that oversee the granting and payment of credits given to candidates, political parties and movements.

Codes of conduct, conflicts of interest and asset declarations:

- Define regulations for the implementation of the National Integrity System, Law 2016 of 2020.
- Promote the development of ethical guidelines that do not only respond to the promotion of values in the institutional framework, but also guide public servants in specific situations in which their ethics may be affected.
- Improve the procedures for collecting information and publishing resumes, declarations of conflict of interest and declarations of assets and income, so that the databases for public consultation can be reusable, processable and interoperable.
- Create an automatic alert system upon detection of unusual or suspicious modifications in asset and income tax returns.

Reporting mechanisms and whistleblower protection:

- Promote legislation to provide protection guarantees to whistleblowers or reporting persons of acts of corruption that takes into account the risks of reporting, conditions of anonymity and protection of personal data.
- Create a unified information system that provides security and confidentiality guarantees to those reporting acts of corruption within the framework of the Institutional Anticorruption Network (RITA).
- Create mechanisms to follow up on the status of corruption complaints filed through RITA and other oversight and investigation entities.

- Provide support and awareness mechanisms to citizens and public servants on the technical and evidentiary requirements of complaints to facilitate investigation and sanction exercises.

Public procurement:

- Promote changes in the contractual regulations in order to unify the country's contracting legislation, regulate the arbitrary use of direct contracting and contracting by special regime.
- Promote within the SECOP framework measures for the publication of the status of contracts after their signature, including progress, failures, non-compliance or possible mishaps that may have occurred.
- Include in SECOP interoperable information on the budgetary origin of each of the contracts registered in the platform.
- Identify in SECOP which contracts have been published after the deadlines established in the regulations, in order to generate alerts and warnings to the entities that fail to comply with the deadlines.

Management of public finances:

- Strengthen the Economic Transparency Portal by including detailed budget information for each of the public entities.
- Include in the Economic Transparency Portal information on the collection and use of tax money and tax benefits granted to private companies.
- Design a single information system for the registration, follow-up and publication of budgetary information that is interoperable with SECOP, and that allows processing, interoperating and reusing the information.

Access to information and participation of society:

- Establish a sanctioning regime for non-compliance with the Law on Access to Public Information.
- Strengthen the technical, human and budgetary capacities of category 6 municipalities and territorial level public entities to comply with the requirements of Law 1712 of 2014 and its regulations.
- Define methods and procedures for non-traditional regulated entities for the publication of the information described in Law 1712 of 2014.
- Perform an official assessment of compliance with Law 1712 of 2014 in terms of information requests (passive transparency).
- Provide security guarantees for citizen participation, especially taking into account the murders of social leaders.
- Define budgets for the development of citizen participation exercises in public institutions.

Judiciary and prosecution services:

- Promote a modification of the selection process of the Prosecutor General's Office of the Nation, eliminating the shortlist given by the President of the Republic, as this may promote possible conflicts of interest between the executive and the judiciary.
- Legally define mechanisms for processing conflicts of interest, especially between the executive branch and the judiciary.
- Update the codes of integrity of the judicial branch, including special measures for dealing with situations that may affect the ethics of judges, prosecutors and other public servants vulnerable to pressure from third parties.

Private sector transparency:

- Define methods and procedures for the private sector in order to comply with the requirements established in Law 1712 of 2014.
- Regulate the existence and operation of channels for reporting acts of corruption in the private sector.

Anti-money laundering:

- Adjust the Anti-Money Laundering and Anti-Terrorist Financing oversight systems and tools to the risk-based approach in accordance with GAFILAT recommendations, and especially take into account the risk of corruption.
- Strengthen measures against the laundering of assets and money laundering, especially in the context of the fight against drug trafficking, since these processes are used to refinance criminal activities and corruption.
- Limit the amounts of money deposited in foreign currency from abroad to newly incorporated companies or companies with suspicious money management.
- Strengthen the processes for detecting illicit income through measures to identify the final beneficiaries of corruption and money laundering.
- Improve control processes at national customs points, in addition to the presence of the DIAN, the Tax and Customs Police.

Measures for direct recovery of property and confiscation tools:

- Strengthen judicial investigation processes to expedite judgments on extinction of ownership.
- Design an information system for public consultation on seized assets, their value and associated investigation processes.
- Advance legislation to identify the victims of acts of corruption and promote their corresponding reparation.
- Strengthen institutional tools and processes to guarantee reparations to victims through the liquidation and sale of assets subject to extinction of ownership.

International cooperation for purposes of confiscation:

- Publish information on the number of proceedings, rulings and results of investigations carried out within the framework of international judicial cooperation and on confiscated assets.
- To the extent possible, unify the norms, procedures, instruments and regulations of international treaties on international judicial cooperation to facilitate the application of the norms according to the requirements established by each country.

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8. Annex – Statistics on Money Laundering²²¹

Information/intelligence phase		2017	2018	2019	2020
TPC	UIAF				
Number of suspicious transaction reports (STRs) ¹ filed by each of the obligated entities (TOTAL)	Number of STRs sent to the UIAF by regulated entities in the Financial, Real and DNFBP sectors (TOTAL)	11760	14164	16044	15744
- Banks and financial institutions	Expanded Financial Sector ¹	7802	8885	9326	10176
	Real Sector ²	2394	2949	4192	4273
- Designated Non-Financial Businesses, Activities and Professions (DNFBPs)	DNFBP Sector ³	1564	2330	2526	1295
Number of suspicious cash activities at the border reported to the UIAF (including those based on declarations and smuggling)	Number of STRs sent to the UIAF, where the regulated entities mention that the suspicious transaction took place in a border zone. ⁴	1733	2022	2496	1940
Number of SARs sent to law enforcement agencies and on which further analysis has been performed	CECAT	There is no information for this period	There is no information for this period	1	0
	CEDE2			1	7
	DIPOL			9	15
	FAC			2	3
	Total number of intelligence reports disseminated to law enforcement agencies			13	25

²²¹ Information obtained by request to the Information and Financial Analysis Unit.

How many people are dedicated full time (or full time equivalent) in the area of money laundering in the UIAF?	Legal reserve is alleged.				
Number of personnel dedicated full time (or full time equivalent) to money laundering at the UIAF					
Number of cases brought to trial: originating from SARs, CTRs and independent law enforcement investigations	Number of cases reported to the FGN	97	47	92	103

¹ Expanded financial sector: Includes entities supervised by Superfinanciera, Supersolidaria, DIAN and MinTIC.

² Real Sector: Includes entities supervised by Supersalud, Supertransporte, CNJSA, Supervigilancia and MinDeporte.

³ Designated Non-Financial Activities and Professions Sector (DNFBP): includes entities supervised by Supersociedades, Supernotariado and Coljuegos.

⁴ Decrees 1814 of 1995, 2036 of 1995, and 930 of 1996 determine the following municipalities as border zones; those highlighted are mentioned in the SARs:

1. in the department of Amazonas: the municipalities of Leticia and Puerto Nariño, and the corregimientos of La Pedrera, Tarapacá, Puerto Arica, El Encanto and Puerto Alegría.

2. In the department of Arauca: the municipalities of Arauca, Saravena, Arauquita, Fortul and Cravo Norte. Fortul and Cravo Norte.

3. In the department of Boyacá: the municipality of Cubará.

4. In the department of Cesar: the municipalities of Valledupar, Manaure, Cesar, La Paz, San Diego, Agustin Codazzi, Becerril, La Jagua de Ibirico, Curumani, Aguachica, Chiriguana, Gamarra, La Gloria, Pelaya, Pailitas, Rio de Oro.

5. In the department of Chocó: the municipalities of Acandí, Ungía, Juradó and Ríosucio.

6. In the department of Guajira: the municipalities of Riohacha, Manaure, Uribia, Maicao, Barrancas, Fonseca, San Juan del Cesar, El Molino, Villanueva, Urumita, Hato Nuevo, Albania, Distracción, La Jagua del Pilar.

7. In the department of Guanía: the municipality of Puerto Inírida and the townships of San Felipe, La Guadalupe, Cacahual, Puerto Colombia, Pana.

8. In the department of Nariño: the municipalities of Pasto, Ipiales, Aldana, Guachucal, Carlosama, Cumbal, Ricaurte, Tumaco, Túquerres, Aponte, Barbacoas, Belén, Buesaco, Cartago, Chachaguí, El Tablón, El Tambo, Guaitarilla, Gualmatán, Iles, Imués, La Cruz, La Unión, Leiva, Linares, Mallma, Policarpa, Puerres, Pupiales, Rosario, Samaniego, San Bernardo, San José de Albán, San Pablo, Sandoná, Sotomayor, Taminango, Tangua, Yacuanquer.

9. In the department of Norte de Santander: the metropolitan area of Cúcuta, Tibú, Puerto Santander, Ragonvalia, Toledo, Pamplona, Pamplonita, Chinácota, Durania, Ocaña, Bochalema, El Carmen, Convención, Abrego, Bucarasica, El Tarra, El Zulia, Hacarí, Herrán, La Playa, Los Patios, San Calixto, San Cayetano, Sardinata, Teorama, Villa del Rosario.

10. In the department of Putumayo: the municipalities of Puerto Asís, Puerto Leguízamo, La Dorada - San Miguel, La Hormiga or Valle del Guamuez.
11. In the department of Vaupés: the municipalities of Mitú and Taraira and the townships of Yavaraté and Pacoa.
12. In the department of Vichada: the municipality of Puerto Carreño, Cumaribo and La Primavera.