

PREVENTING CORRUPTION IN COLOMBIA: THE NEED FOR AN ENHANCED STATE-LEVEL APPROACH

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No country, whether developed or developing, is immune to corruption and each can offer clues as to how best to deal with it. What is essential is to take action against it, to reject the idea that it is an inevitable condition to which people are condemned.¹

I. INTRODUCTION

In 2002, three Bogotá² city council members were arrested for accepting bribes, estimated at US \$37,000, to vote against a city ordinance prohibiting peddlers on the streets.³ That same year, Colombian officials began investigating sixty members of the national police force in connection with the disappearance of over US \$2 million in anti-drug aid from the United States.⁴ Public corruption has existed worldwide for thousands of years.⁵ Generally, most observers will agree that corruption must be eliminated in all forms and in all places, but recommended solutions are almost never uniform and their merits are rarely universally supported.⁶ Only recently has the international community taken action to combat

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1. Héctor Charry Samper, *For a Global Approach to Fighting Corruption: Colombia's Steps Towards Transparency*, 2 F. ON CRIME & SOC'Y 147, 148 (2002). Mr. Samper, the former Minister of Justice of Colombia, served as Chairman of the Ad Hoc Committee for the Negotiation of a U.N. Convention against Corruption until his death in September 2003.

2. Bogotá is the capital of Colombia. As this Note will reveal, corruption is not restricted to the Colombian capital, or even the largest cities, but rather it exists throughout the nation.

3. The council members were arrested as they allegedly accepted a suitcase filled with 100 million pesos (about US \$37,000), which presumably represented one-fourth of the total bribe. See Fordham University, *Corruption Information Exchange*, at <http://www.fordham.edu/economics/vinod/cie/colombia.htm> (last visited Apr. 11, 2004).

4. The police officials were being investigated for irregularities in the handling and spending of the funds, which included double billing and the alleged purchase of unauthorized goods. See *id.*

5. See JOHN T. NOONAN, JR., BRIBES xx (1984).

6. Steven R. Salbu, *Information Technology in the War Against International Bribery and Corruption: The Next Frontier of Institutional Reform*, 38 HARV. J. ON LEGIS. 67, 67 (2001).

this recognized evil.⁷

This Note will demonstrate how certain nations of the world have attempted to fight corruption by using Colombia as an example of a country that, in the last several years, has made relatively substantial strides in an effort to overcome corruption. Colombia's reform has coincided with the efforts of major international organizations to combat corruption through international law.⁸ The most prominent of these organizations are the Organization of American States, the Organization for Economic Cooperation and Development ("OECD"), and the United Nations.⁹ Other organizations playing an active role in anti-corruption include Transparency International, the European Union, the World Bank, the Inter-American Development Bank, and the International Monetary Fund ("IMF").¹⁰

Both domestic and international law regimes are essential to combat corruption, but to effectively overcome the problem, nations must: (1) increase civil society participation; (2) enact and enforce laws that produce transparency in the government and effectively reduce corruption; and (3) reform the judicial branch. Numerous legal scholars have addressed or advocated the use of transnational approaches to fighting corruption,¹¹ unique to this Note, however, is the examination of one country that struggles with corruption and is obligated to "clean up" its system using both transnational and state-level approaches.¹²

7. Peter J. Henning, *Public Corruption: A Comparative Analysis of International Conventions and United States Law*, 18 ARIZ. J. INT'L & COMP. L. 793, 795 (2001).

8. Combating corruption under international law has dramatically increased in the last decade. Alejandro Posadas, *Combating Corruption Under International Law*, 10 DUKE J. COMP. & INT'L L. 345, 346-47 (2000).

9. *Id.* This Note does not address the efforts of the OECD and, specifically, its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. While other articles have analyzed the OECD's Convention, this Note focuses on organizations and agreements in which Colombia participates. Colombia is not a member of the OECD. See Organization for Economic Cooperation and Development, *OECD Member Countries*, at http://www.oecd.org/document/0,2744,en_2649_201185_1889402_1_1_1_1,00.html (last visited Mar. 31, 2004).

10. Posadas, *supra* note 8, at 346-47. This Note does not analyze the efforts of the European Union or the IMF.

11. See generally David A. Gantz, *Globalizing Sanctions Against Foreign Bribery: The Emergence of a New International Legal Consensus*, 18 NW. J. INT'L L. & BUS. 457 (1998); Barbara Crutchfield George & Kathleen A. Lacey, *A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives*, 33 CORNELL INT'L L.J. 547 (2000); Posadas, *supra* note 8; Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 LAW & POL'Y INT'L BUS. 53 (1999).

12. Professor Philip M. Nichols has addressed the need for home country regulation of transnational bribery ("fragmentation") as a compliment to international efforts ("globalization"). See Philip M. Nichols, *Regulating Transnational Bribery in Times of*

Colombia may not be a model of government integrity, but it is an example of a country making gains in the fight against corruption.¹³ It is essential to note that Colombia is also a country taking steps required to meet its international obligations.¹⁴ Part I of this Note reviews the definition of corruption and describes both its consequences on the world and, more particularly, on Colombia. Part II addresses the current international approaches that Colombia has adopted to combat corruption. Part III analyzes the Colombian anti-corruption efforts and their results. This Note concludes that, although Colombia is on the right track, states can most effectively combat corruption through more civil society participation, greater transparency in all branches of government, and an effective judiciary. The Colombian example demonstrates that a victory in the international war against corruption requires significant effort at the state level.

II. THE DEFINITION AND EFFECTS OF CORRUPTION

A. What is Corruption?

The first step in combating corruption is to properly define it. However, as many scholars debate the proper definition, finding an appropriate description poses quite a challenge.¹⁵ The World Bank describes corruption as the “single greatest obstacle to economic and social development.”¹⁶ Black’s Law Dictionary defines “corruption” as “the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary’s or

Globalization and Fragmentation, 24 YALE J. INT’L L. 257 (1999).

13. Colombia is ranked 59th out of 133 countries in Transparency International’s 2003 Corruption Perceptions Index (the top ranking goes to the least corrupt nation surveyed). Press Release, Transparency International, Transparency International Corruption Perceptions Index 2003 4-5, available at http://www.transparency.org/pressreleases_archive/2003/dnld/cpi2003.pressrelease.en.pdf (Oct. 7, 2003) [hereinafter CPI 2003].

14. See *infra* Part III. Colombia’s corruption ranking and score has improved over the last several years. For example, in 1998, Colombia received a score of 2.2 out of 10 (10 representing a low amount of corruption) and was ranked 79th out of 85 countries surveyed. In 2003, the score improved to 3.7 and resulted in a ranking of 59th out of 133 countries surveyed. See *Transparencia por Colombia, Anexo 1: Evolución Histórica de Colombia en el IPC* [Annex 1: Historical Evolution of Colombia in the CPI], at <http://www.transparenciacolombia.org.co/src/client/files/anexo1.doc> (Oct. 7, 2003) [hereinafter *Annex 1*].

15. Scholars offer various definitions of corruption, “which demonstrates that corruption is an expanding—and quite malleable—concept.” Henning, *supra* note 7, at 801-05.

16. The World Bank Group, *The New Anticorruption Home Page*, at <http://www1.worldbank.org/publicsector/anticorrupt/index.cfm> (last visited Mar. 28, 2004) [hereinafter *Anticorruption*].

official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others."¹⁷ One political science scholar gave the following definition of corruption:

[B]ehavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).¹⁸

Although corruption, as demonstrated above, entails a broad range of conduct, the most fundamental form of corruption is bribery.¹⁹ "Every definition of corruption incorporates bribery as the principal form of misconduct."²⁰ Graft is also commonly included within the broad term of corruption. Graft is defined as "taking advantage of a position of trust to gain money or property dishonestly."²¹

The causes of corruption vary between countries because corruption develops uniquely under each country's policies, bureaucratic traditions, political environment, and social history.²² Although the roots of corruption vary, it will often appear when the following factors exist: (1) public officials are given too much discretion due to an absence of clear rules circumscribing their duties;²³ (2) coinciding with discretionary abuse, is the lack of accountability to the public;²⁴ (3) the monopoly power of the public sector can lead to corruption.²⁵ For example, the government is often a market participant, and that role in the economy can produce substantial profits that fall within a public official's discretion.²⁶ (4) Civil society participation, i.e., watchdog institutions that are

17. BLACK'S LAW DICTIONARY 150 (2d pocket ed. 2001).

18. Joseph S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, 61 AM. POL. SCI. REV. 417, 419 (1967) (citation omitted).

19. Henning, *supra* note 7, at 801.

20. *Id.*

21. For example, a public official's fraudulent acquisition of public funds. BLACK'S LAW DICTIONARY 309 (2d pocket ed. 2001).

22. Ian Bannon, *The Fight Against Corruption: A World Bank Perspective*, at http://www.iadb.org/regions/re2/consultative_group/groups/transparency_workshop6.htm (May 25-28, 1999).

23. *Id.*; see also Brian C. Harms, *Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption*, 33 CORNELL INT'L L.J. 159, 164-65 (2000).

24. Bannon, *supra* note 22; see also Harms, *supra* note 23, at 165.

25. Bannon, *supra* note 22; Harms, *supra* note 23, at 164.

26. Harms, *supra* note 23, at 164.

weak, politicized, or non-existent.²⁷ All of the foregoing factors do not have to be present in order for corruption to exist, but the presence of all, or most, of the factors can increase the risk of corrupt practices.

B. The Impact of Corruption on the World and Colombia

Corruption has a detrimental effect on the economic and social well-being of the world.²⁸ It is a dilemma that weakens democratic development by hindering the proper performance of government.²⁹ It undermines economic development by weakening the foundation necessary for growth.³⁰ Corruption distorts the market by promoting competition for bribes, rather than competition in the quality or price of services and goods.³¹ Corruption is particularly harmful to the poor as they are the most adversely affected by the economic decline that results from corruption and are the least capable of paying the additional prices connected with corrupt practices.³²

Corruption adversely affects Colombia socially, economically, and politically. Colombia became an independent nation in 1810, and its history is replete with conflict.³³ Continuous political conflicts in the twentieth century produced a government more focused on political harmony than combating crime and corruption.³⁴ The emergence of the drug trade in Colombia gave rise to a level of corruption unmatched by any other period in the country's history.³⁵ "Drug trafficking money progressively spread its taint throughout the different branches of public power in Colombia, dashing values, sacrificing principles, buying political leaders, judges, policemen, soldiers, reporters, and academics from the municipal to the national level."³⁶ The drug cartels exercised tremendous power through corruption and many who resisted their bribes or attempted to fight

27. Bannon, *supra* note 22.

28. The World Bank Group, *Anticorruption: Costs & Consequences of Corruption*, at <http://www1.worldbank.org/publicsector/anticorrupt/topic1.htm> (last visited Mar. 9, 2004).

29. JEREMY POPE, TI SOURCE BOOK 2000 31 (Transparency Int'l 2000), available at <http://www.transparency.org/sourcebook/04.pdf> (last visited Feb. 10, 2004).

30. *Anticorruption*, *supra* note 16.

31. POPE, *supra* note 29, at 31.

32. *Anticorruption*, *supra* note 16 (noting that bribery generally raises transaction costs). See also Cheryl W. Gray & Daniel Kaufmann, *Corruption and Development*, FIN. & DEV., Mar. 1998, at 8.

33. Transparency International, National Integrity Systems Country Study Report: Colombia 2001 3, available at http://www.transparency.org/activities/nat_integ_systems/dnld/colombia.pdf (last visited Feb. 10, 2004) [hereinafter Colombia Report].

34. *Id.* at 4.

35. See *id.* at 4-5.

36. *Id.* at 4.

corruption were murdered.³⁷ Perhaps, the most poignant event during this era occurred during the 1990 presidential campaign when three presidential candidates were murdered.³⁸ Among those killed was Luis Carlos Galán, the candidate highly favored to win the election.³⁹ Galán was determined to combat drug trafficking and the consequential problem of corruption.⁴⁰

Although in recent years Colombia has taken steps to reduce corruption, it is still a problem that drastically affects the nation. Colombian government estimates place the yearly *per capita* cost of corruption at US \$6,100 (one percent of the country's Gross Domestic Product).⁴¹ A World Bank report estimated that the annual cost of corruption in Colombia is US \$2.6 billion, which is equivalent to 60% of the nation's debt.⁴² Corruption scandals involving government officials remain common occurrences.⁴³ For example, Armando Pomárico, the former president of the Colombian Chamber of Representatives, was charged with procurement irregularities.⁴⁴ The charges stemmed from allegations that he authorized payments of approximately US \$2.5 million for improvements to the congressional headquarters that were never made or were highly inflated in cost and salaries for employees who supposedly worked during Christmas recess, but did not.⁴⁵ Such scandals not only affect political careers, but also harm public confidence in the government.

Those who attempt to expose government corruption put their lives in jeopardy. In February 2002, Orlando Sierra, the deputy editor of the Colombian newspaper La Patria ("The Homeland"), was shot to death by two gunmen.⁴⁶ The

37. *Id.* at 5.

38. *Id.*

39. *Id.*

40. *Id.*

41. TELMA LUZZANI, 2001 GLOBAL CORRUPTION REPORT: SOUTH AMERICA 168 (Transparency Int'l 2001), *available at* http://www.globalcorruptionreport.org/download/gcr2001/tr_s_america.pdf.

42. EDUARDO WILLS HERRERA ET AL., 2003 GLOBAL CORRUPTION REPORT: SOUTH AMERICA 108 (Transparency Int'l 2003), *available at* [http://www.gcr.netscript.kunde.sserv.de/download/gcr2003/11_South_America_\(Wills_Uruena\).pdf](http://www.gcr.netscript.kunde.sserv.de/download/gcr2003/11_South_America_(Wills_Uruena).pdf).

43. LUZZANI, *supra* note 41, at 170.

44. *Id.*

45. Associated Press, *Escándalo en Colombia* [*Scandal in Colombia*] (Mar. 26, 2000), *at* <http://old.clarin.com/diario/2000/03/26/i-03901d.htm>. As of 2002, the investigation involving Pomárico was still in progress and, although it appeared that he would be tried on charges of corruption, to the author's knowledge, no sentence has been imposed. *See* Programa Presidencial de Lucha Contra la Corrupción, *Nuevas Vinculaciones en el Caso del Congreso* [*New Links in the Case of Congress*], *at* <http://www.anticorruccion.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=79> (Mar. 22, 2002).

46. *Colombia: Anti-graft reporter dies after attack*, TI NEWSL. (Transparency Int'l, Berlin, F.R.G.), Mar. 2002, *available at*

reporter was known for his columns attacking official graft in Manizales, Colombia.⁴⁷ On December 18, 2003, William Soto, a journalist, was shot and killed while going to work in Buenaventura, Colombia.⁴⁸ Soto had reported on several cases of local corruption and had also received death threats prior to his murder.⁴⁹ Soto was one of several journalists killed in Colombia in 2003.⁵⁰ At least four of the murdered reporters had denounced public corruption or investigated cases of it.⁵¹

Corruption has inflicted many wounds on Colombia. From economic disruption to murder, the consequences of corruption in this South American country are varied.⁵² Although corruption has affected Colombia for many years,⁵³ the country, with the support of the international community, is striving to reduce corruption in an attempt to eliminate its harmful effects. The question remains: is Colombia, a country illustrative of many nations facing similar acts of corruption, doing all that is necessary to effectively prevent corruption?

III. ASSISTANCE FROM INTERNATIONAL ANTI-CORRUPTION INITIATIVES

Corruption is a global problem that transcends national boundaries; therefore, Colombia cannot rely solely upon local laws and procedures to achieve the necessary changes.⁵⁴ Fortunately, various international organizations, such as the Organization of American States, Transparency International, the World Bank, the United Nations, and the Inter-American Development Bank, make vital contributions to the anti-corruption effort. This Note will demonstrate that these

<http://www.transparency.org/newsletters/2002.1/reports.html#col2>.

47. *Id.*

48. *Radio-TV reporter slain, 7th in 2003*, CHI. TRIB., Dec. 21, 2003, available at 2003 WL 70653135.

49. *Id.*

50. *Id.* Reports vary as to how many Colombian journalists were killed in 2003. Several articles state that Soto was the seventh journalist killed. However, *El Tiempo*, a Colombian newspaper, reported that as many as eleven reporters were killed in 2003. *Asesinado en Buenaventura el Periodista William Soto [Reporter William Soto Killed in Buenaventura]*, EL TIEMPO (Dec. 19, 2003), available at <http://portal-pfc.org/perseguidos/2003/161.html>.

51. Press Release, Fundación para la Libertad de Prensa, Los Corruptos, Principales Agresores de Periodistas Colombianos [The Corrupt: Primary Aggressors of Colombian Journalists], at <http://www.flip.org.co/Comunicados/Comunicado%20datos%202003.htm> (Jan. 2004).

52. *See supra* Part II.B.

53. HERRERA, *supra* note 42, at 108.

54. Furthermore, international laws provide either a starting point to enact domestic anti-corruption laws or they can strengthen existing domestic law. *See Gantz, supra* note 11, at 468-69; Henning, *supra* note 7, at 806.

organizations have played a considerable role in helping Colombia fight corruption.

A. The Organization of American States

The Organization of American States (“OAS”) is an organization consisting of thirty-five member countries in the Western Hemisphere.⁵⁵ The OAS was created as a regional agency pursuant to Article 52 of the U.N. Charter.⁵⁶ The goals of the OAS are set forth in its Charter, with equality of states, non-intervention, self-determination, and the peaceful resolution of disputes denoted as some of its chief goals.⁵⁷ The OAS, as a regional agency of the U.N., is bound to the same principles and purposes as the U.N.⁵⁸ Colombia is a member of the OAS.⁵⁹

1. The Inter-American Convention Against Corruption

On December 11, 1994, the heads of state of the OAS member states convened at the Summit of the Americas for the purpose of creating a Declaration of Principles (“Declaration”) and a Plan of Action (“Plan”).⁶⁰ The objective of the their Declaration and the Plan was: (1) to strengthen democracy; (2) promote development; (3) achieve economic integration and free trade; (4) improve the lives of their people; and (5) protect the natural environment for future generations.⁶¹ As part of the Plan, the delegates resolved to “[d]evelop within the OAS, with due regard to applicable treaties and national legislation, a hemispheric approach to acts of corruption in both the public and private sectors.”⁶² This

55. The following are members of the OAS: Antigua & Barbuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent & Grenadines, Suriname, Trinidad & Tobago, United States, Uruguay, and Venezuela. Org. of Am. States, *About the OAS: Member States and Permanent Missions*, at <http://www.oas.org/main/main.asp?sLang=E&sLink=.../documents/eng/memberstates.asp> (last visited Mar. 31, 2004). Although a member, Cuba has been excluded from participation in the OAS since 1962. *Id.*

56. See U.N. CHARTER art. 52, para. 1-4.

57. OAS CHARTER arts. 2-3.

58. Robert H. Sutton, *Controlling Corruption Through Collective Means: Advocating the American Convention Against Corruption*, 20 *FORDHAM INT’L L.J.* 1427, 1445-46 (1997).

59. See U.N. CHARTER art. 52, para. 1-4.

60. Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1994, 34 *I.L.M.* 808, 815 (1995).

61. *Id.* at 810-13.

62. *Id.* at 818-19. The terms “hemispheric approach” and “hemispheric agreement”

proposed approach “would include extradition and prosecution of individuals so charged, through negotiation of a new hemispheric agreement or new arrangements within existing frameworks for international cooperation.”⁶³

On March 29, 1996, the OAS realized the anti-corruption measure proposed by the Plan with the adoption of the Inter-American Convention against Corruption (“IACAC”).⁶⁴ The IACAC was initially proposed and quickly adopted by Latin American countries.⁶⁵ One legal scholar noted that this was a consequence of the expansion of democracy within Latin America, resulting in the desire to stamp out corruption in the public sector.⁶⁶ The adoption of the IACAC was a milestone in anti-corruption measures because it was the first binding anti-corruption agreement in the world.⁶⁷ Upon adoption of the IACAC, it was sent to each member state for signature and ratification.⁶⁸ As of January 31, 2004, twenty-nine members have signed and ratified or acceded the IACAC.⁶⁹ Colombia signed the IACAC on March 29, 1996 and ratified it on November 25, 1998.⁷⁰ The overwhelming acceptance of the IACAC is evidence of the Western Hemisphere’s recognition that corruption has a corrosive effect on society and must be eliminated.⁷¹

2. Provisions of the Inter-American Convention Against Corruption

refer to the fact that the OAS, as a regional agency made up of nations in the Western Hemisphere, is designed to pursue measures that will be adopted and enforced throughout the Western Hemisphere.

63. *Id.*

64. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724, 724 [hereinafter IACAC].

65. Venezuela had a notable role in the development of the IACAC. Gantz, *supra* note 11, at 477. The following is a list of Latin American countries that adopted the Convention by 1999: Argentina, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. Org. of Am. States, *B-58: Inter-American Convention Against Corruption*, at <http://www.oas.org/juridico/english/Sigs/b-58.html> (last visited Apr. 8, 2004).

66. Gantz, *supra* note 11, at 477.

67. Org. of Am. States, *Key OAS Issues: Combating Corruption*, at http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/key_issues/eng (last visited April 1, 2004) [hereinafter *Key Issues*].

68. Henning, *supra* note 7, at 807.

69. Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Lucia, St. Vincent & Grenadines, Suriname, Trinidad & Tobago, United States, Uruguay, and Venezuela. Org. of Am. States, *supra* note 65.

70. *Id.*

71. Gantz, *supra* note 11, at 477.

The Preamble of the IACAC emphasizes the harmful effects of corruption and the need for an international instrument to promote cooperation in the movement to eradicate corruption.⁷² The stated purpose of the IACAC is to support and strengthen the development of methods within each member state necessary for the prevention, detection, punishment, and elimination of corruption.⁷³ Furthermore, the IACAC acts as an international monitoring system to ensure that each state is taking effective anti-corruption measures and enforcing them.⁷⁴

The scope and requirements of the IACAC are unique, even when compared to multilateral anti-corruption measures that have been subsequently enacted.⁷⁵ The IACAC approach is considered more specific than other measures because it “[lists] specific acts to criminalize, regulations to enact, and measures to pursue, not merely general categories in which to act.”⁷⁶ The IACAC encourages “local governments to deal more effectively with the problem of domestic corruption.”⁷⁷ The states must examine their own existing institutional anti-corruption measures and consider how to more effectively apply those measures in order to create and promote mechanisms that ensure proper conduct by public servants.⁷⁸ Moreover, Article VII of the IACAC requires member states to enact domestic laws that criminalize acts of corruption.⁷⁹ Article VI provides a detailed list of the acts of corruption subject to enforcement.⁸⁰

72. IACAC, *supra* note 64, at 727.

73. *Id.* at 728.

74. *Id.* at 728-29.

75. Sutton, *supra* note 58, at 1477.

76. *Id.*

77. Gantz, *supra* note 11, at 478.

78. IACAC, *supra* note 64, at 728-29.

79. *Id.* art. VII.

80. This Convention is applicable to the following acts of corruption:

a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third

The IACAC is not limited to merely bolstering domestic enforcement of corruption that occurs within a nation's borders. Rather, the IACAC is considered "the most far-reaching international accord in the field because it reaches both transnational bribery and domestic corruption."⁸¹ Article VIII addresses transnational bribery by requiring states to prohibit and punish any citizen found to have bribed a foreign government official.⁸² This mandate applies regardless of whether or not a state has existing laws against transnational bribery.⁸³

Article IX of the IACAC requires states to take necessary measures to prohibit "illicit enrichment," which is defined as "a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions."⁸⁴ The requirement is subject to the respective constitutions and legal principles of each state.⁸⁵ Accordingly, under the IACAC, a government official in a party state who obtains an inexplicable increase in wealth is presumed to have committed an act of corruption in states where such a presumption of guilt is permitted.⁸⁶ This approach would be unacceptable in nations such as the United States where one is presumed innocent until proven guilty.⁸⁷

International assistance and cooperation are important elements of the IACAC. Under Article XIII, all offenses to which the IACAC applies must be included as extraditable offenses in any extradition treaty existing among member states.⁸⁸ Furthermore, member states agree to offer mutual assistance by processing requests for information and/or evidence from proper legal

party;

d. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

e. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

Id. at 729-30.

81. Henning, *supra* note 7, at 807.

82. IACAC, *supra* note 64, at 730.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* Illicit enrichment, as defined in Article IX, existed as a crime in several Latin American countries prior to the IACAC. In such civil law jurisdictions, the burden is often placed on the defendant due to the inadequacy of investigatory institutions. Gantz, *supra* note 11, at 479; Henning, *supra* note 7, at 814-15.

87. Gantz, *supra* note 11, at 479; Henning, *supra* note 7, at 815. The U.S. Senate ratified the IACAC with the explicit understanding that it was not implementing the illicit enrichment provision because it would be inconsistent with the Constitution and fundamental principles of the U.S. legal system. 146 CONG. REC. S7809-01 (2000).

88. IACAC, *supra* note 64, at 731-32.

authorities.⁸⁹ Similarly, all parties to the IACAC commit to help each other by sharing information on the most effective ways of “preventing, detecting, investigating and punishing acts of corruption.”⁹⁰

The IACAC has been described as the most comprehensive anti-corruption measure in the world.⁹¹ Each member state agrees to binding legal obligations, including criminalizing domestic corruption, strengthening the prevention and detection of corrupt acts, punishing offenses by foreign parties, and progressing through a cooperative movement of monitoring and sharing effective ways of preventing corruption.⁹²

Several years have passed since the adoption of the IACAC; thus, the OAS members have had an opportunity to incorporate the IACAC provisions into their anti-corruption plans. For example, Canada has proposed or adopted several measures to improve government ethics.⁹³ El Salvador announced that it was reforming its illicit enrichment law while also creating an Office of Government Ethics and a government ethics code.⁹⁴ In March 2003, Jamaica launched the Corruption Prevention Commission to examine public officers earning J \$2 million or more.⁹⁵ Although this does not represent all that has been done by OAS member states or these respective nations, it does provide a glimpse at some of the accomplishments following ratification of the IACAC.

3. Implementation of the IACAC in Colombia

The Colombian government adopted the IACAC through the enactment of Law 412 of 1997.⁹⁶ Following the adoption of the IACAC, the member states established a follow-up mechanism to measure compliance with the provisions of the IACAC.⁹⁷ The process was divided into multiple rounds with several countries being examined in each round.⁹⁸ As part of the examination, each country was required to respond to a questionnaire designed to gather information

89. *Id.* at 732.

90. *Id.*

91. Luz Estella Nagle, *The Challenges of Fighting Global Organized Crime in Latin America*, 26 *FORDHAM INT'L L.J.* 1649, 1672 (2003).

92. *See generally* IACAC, *supra* note 64; Gantz, *supra* note 11, at 480.

93. Org. of Am. States, National Progress Reports: Canada, *available at* http://www.oas.org/juridico/spanish/mec_avance_can.pdf (last visited Apr. 1, 2004).

94. Org. of Am. States, National Progress Reports: El Salvador, *available at* http://www.oas.org/juridico/spanish/mec_avance_sal.pdf (last visited Apr. 1, 2004).

95. Org. of Am. States, National Progress Reports: Jamaica, *available at* http://www.oas.org/juridico/spanish/mec_avance_jam.pdf (last visited Apr. 1, 2004).

96. Republic of Colombia, Questionnaire on Provisions Selected by the Committee of Experts for Analysis within the Framework of the First Round (May 24, 2002), *available at* http://www.oas.org/juridico/spanish/col_res28.htm [hereinafter Questionnaire].

97. *Key Issues*, *supra* note 67.

98. *Id.*

about the country's existing anti-corruption laws and programs.⁹⁹ On May 24, 2002, Colombia submitted its response to the questionnaire.¹⁰⁰ According to the information provided by the Colombian government in the questionnaire, Colombia complies with many, but not all, of the main requirements of the IACAC.¹⁰¹

To some degree, Colombia is attempting to further comply with the IACAC. For example, the government is moving forward with a project entitled "Alcaldía Electrónica" ("Electronic Mayor's Office").¹⁰² The project is intended to provide citizens with access to local government information regarding municipal services and procedures, contracting, and transactions.¹⁰³ Additionally, the legislature is endeavoring to modify the General Public Administration Contracting Statute (Law 80 of 1993), which regulates government contracting, in order to make it more compliant with the ideals of the IACAC.¹⁰⁴ According to the Colombian government, the IACAC is prompting changes in Colombia and one of the greatest benefits that Colombia derives from the IACAC is not the impetus to implement an array of new domestic laws or programs, but the assurance of regional cooperation and international assistance to fight corruption. However, "the IACAC and any other anti-corruption instrument can only be successful if the officials responsible for implementation are themselves held accountable for their own conduct. It is one thing to tell the world that one's Nation is participating in an international convention, and another matter altogether to actually live up to the convention itself."¹⁰⁵ Colombia, along with the other parties to the IACAC, has both a challenge and an opportunity to make the IACAC a success rather than a "cautionary tale."¹⁰⁶

99. *Id.*

100. Questionnaire, *supra* note 96, ch. (5)(1)(a).

101. The Questionnaire did not inquire into Colombia's compliance with every article of the IACAC. A substantial amount of the Questionnaire is concerned about the country's compliance with Article III (the existence and enforcement of standards of conduct). The Questionnaire also addresses compliance with Articles XIV (international assistance and cooperation) and XVIII (designation of a central authority for the purposes of international assistance). *See generally id.* Colombia has enacted several laws and programs addressing the issues that require attention under the IACAC. *See infra* Part III.A-B.

102. Org. of Am. States, National Progress Reports: Colombia, *available at* http://www.oas.org/juridico/spanish/mec_avance_col.pdf (last visited Apr. 13, 2004).

103. *Id.*

104. *Id.* *See infra* Part III.A.1, for further discussion regarding Law No. 80 of 1993.

105. Nagle, *supra* note 91, at 1678.

106. Professor Nagle observes that the ongoing corruption in Latin America "suggests that the experience of the IACAC is best viewed as a cautionary tale." *Id.*

B. Transparency International

1. The Background of Transparency International

Transparency International (“TI”), which began functioning in 1993, is a relatively new non-profit Non-Government Organization (“NGO”) that is dedicated “[t]o curb corruption by mobilizing a global coalition to promote and strengthen international and national Integrity Systems.”¹⁰⁷ TI is unique among the international NGO’s because it is the only one devoted solely to eliminating corruption.¹⁰⁸ TI follows certain guiding principles in its effort to fight corruption: (1) the recognition of a shared responsibility for corruption; (2) an emphasis on prevention and on reforming systems, not on exposing individual cases; (3) an awareness that the movement against corruption is global and transcends social, political, economic, and cultural systems; (4) an internal observation of the principles of participation, decentralization, diversity, accountability, and transparency; (5) non-partisanship; and (6) a recognition that there are both practical and ethical reasons for combating corruption.¹⁰⁹

TI accomplishes its purposes through the formation of national, regional, and international coalitions that support the states, civil society, and the private sector in anti-corruption efforts at all levels.¹¹⁰ TI established and currently supports over eighty national chapters throughout the world.¹¹¹ The organization assists in designing and implementing integrity systems.¹¹² It researches and publishes information to raise public knowledge about the harmful effects of corruption.¹¹³ The NGO also publishes resource information about effective anti-corruption measures and organizes anti-corruption workshops.¹¹⁴

Two important examples of TI’s efforts to research and increase

107. Transparency International, *TI Mission Statement*, at http://www.transparency.org/about_ti/mission.html (last visited Feb. 11, 2004) (on file with author) [hereinafter *Mission Statement*]; Transparency International, *TI History*, at http://www.transparency.org/about_ti/history.html (last visited Feb. 11, 2004). An “Integrity System” is defined as a set of elements that allow a country and its respective citizenry to act with transparency, efficiency, and effectiveness. The elements vary from country to country, but some of the most common elements include: the legislature, the executive, the judiciary, watchdog agencies, the media, and civil society. These elements are built upon a foundation of public awareness and societal values. POPE, *supra* note 29, at 32-36.

108. *Mission Statement*, *supra* note 107.

109. *Id.*

110. *Id.*

111. *Id.*; Transparencia Por Colombia, *Presentación* [*Presentation*], at http://www.transparenciacolombia.org.co/presentacion/1n_presentacion1.htm (last visited Oct. 10, 2002) (on file with author) [hereinafter *Presentation*].

112. *Mission Statement*, *supra* note 107.

113. *Id.*

114. Posadas, *supra* note 8, at 407.

awareness of corruption are the Corruption Perceptions Index (“CPI”) and the Bribe Payer’s Index (“BPI”). The CPI is a poll that rates countries based on their level of perceived corruption among public officials and politicians.¹¹⁵ The CPI scores countries on a scale of zero to ten with ten being the least corrupt.¹¹⁶ In 2003, TI polled 133 countries with the 133rd country having the perception of being the most corrupt.¹¹⁷ The BPI is also based on surveys and ranks leading exporting countries according to their perceived susceptibility to tolerate corrupt practices in business transactions.¹¹⁸ The survey was carried out in Colombia and fourteen other emerging market economies to determine the likelihood that companies from the leading exporting nations would pay bribes to public officials in the fifteen countries.¹¹⁹ Because it is not considered a leading exporting country, Colombia was not evaluated in the BPI 2002 although the survey was carried out in Colombia.¹²⁰

The Integrity Pact, an innovative development from Transparency International, is a contract in which a private bidder explicitly pledges not to offer any bribes, gifts, or favors to a government official, or any relatives or friends of the official, in exchange for a benefit, such as money or an object of value.¹²¹ The official promises to avoid demanding or accepting any bribes, gifts, or favors in exchange for preferential treatment.¹²² A violation of an Integrity Pact can result in sanctions such as fines, criminal charges, removal from office, forfeiture of the bid, cancellation of the business contract, or blacklisting for future bidding.¹²³

2. The Impact of TI in Colombia

TI has a national chapter in Colombia that has played an active role in fighting corruption within the country. Transparencia por Colombia (“Transparency for Colombia,” hereinafter “TI-Colombia”) was officially organized in 1998.¹²⁴ The organization actively calls upon the social and business

115. The CPI 2003 was the result of seventeen different polls and surveys of business people and country analysts, which were conducted by thirteen independent institutions. CPI 2003, *supra* note 13, at 3.

116. *Id.* at 4.

117. *Id.* at 6.

118. See Transparency International, *Questions and Answers on the TI Bribe Payers Index (BPI) 2002*, at http://www.transparency.org/cpi/2002/bpi_faq.en.html (last visited Mar. 27, 2004).

119. *Id.*

120. *Id.*

121. Transparency International, *The Integrity Pact: The Concept, the Model and the Present Applications: A Status Report 4-7* (Dec. 31, 2002), available at http://www.transparency.org/building_coalitions/integrity_pact/i_pact.pdf [hereinafter Integrity Pact].

122. *Id.*

123. *Id.*

124. *Presentation, supra* note 111.

sectors and the media to join together in an alliance to fight corruption.¹²⁵ In May 2001, twenty-one major national and international companies, including Hewlett Packard, Sun Microsystems de Colombia, and the Merck Company Foundation agreed to join as members or benefactors of TI-Colombia.¹²⁶

TI-Colombia and the Colombian government have cooperated in measures to prevent corruption. Since 1999, TI-Colombia has designed and implemented numerous Integrity Pacts between various national and international parties within Colombia.¹²⁷ The achievements from these pacts have been varied and, in some cases, significant.¹²⁸ For instance, Integrity Pacts have resulted in substantial savings of public funds,¹²⁹ higher quality contracts,¹³⁰ and a greater emphasis on ethical behavior in public contracting.¹³¹ In addition to promoting Integrity Pacts, TI-Colombia supervised the Colombian government's merit-based selection process for hiring 119 Regional Directors for agencies within the Ministries of Labor and Health.¹³²

TI's efforts alerted the Colombian government of the existing corruption and informed the government of its prolific extent.¹³³ In recent years, the government has taken special notice of the CPI and has focused on improving the country's ranking.¹³⁴ In the CPI of 1995, Colombia was ranked thirty-one out of

125. Colombia Report, *supra* note 33, at 10.

126. *Presentation*, *supra* note 111.

127. Between 1999 and June 2003, TI-Colombia implemented Integrity Pacts in sixty government contracts that involved about US \$2.215 million. *Transparencia por Colombia*, Notes on some legal aspects of the Integrity Pacts 10 (June 6, 2003), available at <http://www.transparenciacolombia.org.co/src/client/files/ingles.pdf>.

128. *Transparencia por Colombia*, *Logros y Dificultades [Achievements and Difficulties]*, at http://www.transparenciacolombia.org.co/src/client/scripts/informacion.php?cat_id=46 (last visited Apr. 13, 2004).

129. Some participating public entities saved between 5% to 60% of the amount specified in the contract budget. *Id.*

130. *Id.*

131. *Id.*

132. Programa Presidencial de Lucha Contra la Corrupción, *Resumen de Avances y Resultados del Programa Presidencial de Eficiencia y Lucha Contra la Corrupción [Summary of the Advances and Results of the Presidential Program of Efficiency and the Fight Against Corruption]*, at <http://www.anticorruptcion.gov.co/home/principal.asp?flag1=plantillas1&flag2=1&flag3=319&flag4=0> (Jan. 13, 2003) [hereinafter *Summary*]; *Transparencia por Colombia*, *Accomplishments*, at http://www.transparenciacolombia.org.co/src/client/scripts/informacioneng.php?cat_id=77 (last modified Mar. 25, 2004).

133. *See infra* notes 134-137.

134. The website for the Presidential Program for the Fight against Corruption publishes the rankings from the CPI. *See* Programa Presidencial de Lucha Contra la Corrupción, *Colombia reduce sus niveles de corrupción: Transparencia Internacional [Transparency International: Colombia Reduces Its Levels of Corruption]*, at

forty-one countries polled, with forty-one being the most corrupt.¹³⁵ In 2003, Colombia received the ranking of 59 out of 133 countries.¹³⁶ The results of the CPI surveys demonstrate that Colombia is not among the most corrupt nations in the world, but they indicate that it is a serious problem that must be addressed.¹³⁷

In 2002, TI-Colombia released the results of their first Public Entities Integrity Index. This yearly study monitors different Colombian government entities in connection with three factors: transparency, control and sanctions, and efficiency and institutionality.¹³⁸ Among the eighty-eight Colombian government entities that were evaluated, only one achieved an optimal score (ninety points); twenty-one entities barely achieved a fair performance rating; fifty-four entities scored under seventy, which is poor; eleven agencies scored below fifty, a disturbing result that, according to TI, requires immediate national attention and improvement.¹³⁹ This lowest ranked group included such entities as the Chamber of Representatives, the Senate, and the Ministries of Education, Transportation, and Defense.¹⁴⁰ The alarming results of the 2002 Integrity Index were proof that although Colombia has made progress in fighting corruption, there is still much to be done.¹⁴¹

<http://www.anticorruccion.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=16> (Jun. 28, 2001).

135. *Annex 1, supra* note 14.

136. On a scale between 0 and 10, Colombia received a score of 3.7. CPI 2003, *supra* note 13, at 4.

137. Programa Presidencial de Lucha Contra la Corrupción, *Transparencia Internacional Publica IPC del 2002* [*Transparency International Publishes the 2002 CPI*], at

<http://www.anticorruccion.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=11> (Aug. 30, 2002).

138. Press Release, Transparency International, *Transparencia por Colombia Presents the Results for the 2002 Public Entities Integrity Index and the 2002 Comparison of State Powers, and Demands Effectiveness from the Uribe Administration Regarding Anti Corruption Policies*, at http://www.transparency.org/pressreleases_archive/nat_chaps_press/2002.09.30.integrity_index_colombia.html (Sep. 30, 2002) [hereinafter TI Press Release]. A score of 90-100 is an optimal score (low risk of corruption); a score of 70-90 is a fair score (medium risk of corruption); a score of 50-70 is a low score (high risk of corruption); and a score of 0-50 is poor (very high risk of corruption). *Id.*

139. *Id.* Twelve entities did not receive a final score. TRANSPARENCIA POR COLOMBIA, RESULTADOS ÍNDICE DE INTEGRIDAD DE LAS ENTIDADES PÚBLICAS NACIONALES: RESULTADOS 2003 [NATIONAL PUBLIC ENTITY INTEGRITY INDEX RESULTS: 2003 RESULTS] 37 (2003), available at <http://www.transparenciacolombia.org.co/src/client/files/indice2003.pdf> [hereinafter 2003 RESULTS].

140. TI Press Release, *supra* note 138, at http://www.transparency.org/pressreleases_archive/nat_chaps_press/2002.09.30.integrity_index_colombia.html.

141. *Id.*

The results of the 2003 study were similar to those of the 2002 study although the number of entities surveyed was increased from 88 to 146.¹⁴² Among the 146 entities evaluated, 3 received an optimal score; 52 entities received a fair score; 66 agencies had a high risk of corruption; and 11 entities scored below 50 and had a very high risk of corruption.¹⁴³ Two entities of greatest concern—the Chamber of Representatives and the Senate—saw significant improvement in their scores, but the Chamber of Representatives still only received a score of fifty-two, indicating a high risk of corruption, while the Senate improved to forty-one, which still means a very high risk of corruption.¹⁴⁴

TI, along with its Colombian chapter, has made important gains in the movement to raise consciousness of corruption in Colombia. Not only has the organization improved the awareness of corruption through the CPI, but it is also cooperating with the government to reduce corrupt practices.¹⁴⁵ Colombia will benefit from the use of Integrity Pacts, but a greater advantage could be derived from relying on the success of such agreements to enact further domestic legislation, requiring such pacts in order to prevent public corruption.

C. The World Bank

1. The World Bank Approach

The World Bank is not the most noticeable player in the anti-corruption movement, but it plays a significant and influential role. The World Bank, owned by over 184 member countries, “is one of the world’s largest sources of development assistance” and works in over 100 countries to improve living standards.¹⁴⁶ The World Bank’s anti-corruption method consists of the following approaches: (1) discovering and preventing corruption within the Bank; (2) preventing corruption in projects financed by the World Bank; (3) supporting international anti-corruption measures; (4) attaching anti-corruption obligations

142. 2003 RESULTS, *supra* note 139, at 37.

143. *Id.*

144. *Id.* at 41. While TI fails to specifically point out why the legislature has slightly improved, the NGO does observe that the small improvement is still a reflection of the legislature’s efforts to conduct its affairs with greater transparency. *Id.*

145. The Colombian government has relied on studies such as the CPI in formulating government policy. See Programa Presidencial de Lucha Contra la Corrupción, *Bases del Plan Nacional de Desarrollo 2002-2006: Incrementar la transparencia y eficiencia del Estado* [Elements of the National Development Plan: Increase the Transparency and Efficiency of the State], available at <http://www.presidencia.gov.co/planacio/cap4/cap1.htm#2> (last visited Feb. 11, 2004) [hereinafter Development Plan]. See *supra* notes 127 & 132 and accompanying text.

146. The World Bank Group, *What is the World Bank*, at <http://www.worldbank.org/> (last visited Apr. 13, 2004).

and training to country assistance programs; and (5) offering support to those nations that request assistance in curbing corruption.¹⁴⁷

For the World Bank to maintain the confidence of its borrowers and to contribute in the efforts to combat corruption, it must establish safeguards to prevent corruption within the institution itself.¹⁴⁸ The provisions of the World Bank Staff Rules establish the code of conduct within the institution.¹⁴⁹ Moreover, a statement of ethics is distributed yearly to all bank employees.¹⁵⁰ Furthermore, the Outside Interests Committee monitors staff activity and must approve any conduct unrelated to official duties.¹⁵¹

The World Bank has an apparent interest in preventing corruption in projects that it finances.¹⁵² Procedurally, the World Bank makes an early appraisal of any issues of corruption during the project design stage.¹⁵³ The appraisal typically includes the participation of the borrowers and NGOs.¹⁵⁴ As part of the appraisal, the World Bank also examines any initial complaints of corruption, the selection of the project location, and the adequacy of the project's accounting system.¹⁵⁵

During the execution of the project, the World Bank places great emphasis on monitoring for corruption with specific attention given to auditing.¹⁵⁶ The close scrutiny assures that corruption issues are timely and adequately addressed.¹⁵⁷ Every World Bank loan contract provides that the Bank may cancel the loan whenever corruption is discovered.¹⁵⁸ A party financed by a World Bank loan that is found to have acted corruptly may be barred from participating in future projects.¹⁵⁹ The World Bank may also require a borrower to divulge

147. Bannon, *supra* note 22.

148. *See id.*

149. For example, termination of employment is mandatory for any act of corruption that entails the abuse of World Bank or public funds. Ibrahim F.I. Shihata, *Corruption: A General Review with an Emphasis on the Role of the World Bank*, 15 DICK. J. INT'L L. 451, 478 (1997).

150. *Id.*

151. *Id.*

152. The World Bank was created to aid in global reconstruction following World War II. It "stimulates productive investment in developing countries by lending capital to the countries for infrastructure projects ... and engaging in other projects intended to provide a social cushion to the poor." George & Lacey, *supra* note 11, at 575. Where World Bank funds are misappropriated for acts of corruption, the Bank's goals are inhibited.

153. Shihata, *supra* note 149, at 479.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* at 480.

159. Shihata, *supra* note 149, at 480-81.

various documents, including contracts and records, that relate to the project.¹⁶⁰

In addition, the World Bank strongly supports a number of international organizations engaged in anti-corruption.¹⁶¹ Specifically, the World Bank provides assistance to the OECD, the United Nations Development Program, the IDB, and the OAS among others.¹⁶² Such help commonly exists in the form of sharing information about effective methods and tools for fighting corruption.¹⁶³

The World Bank identifies five components for fostering an effective anti-corruption strategy: (1) “Increasing political accountability”; (2) “Strengthening civil society participation”; (3) “Creating a competitive private sector”; (4) “Institutional restraints on power”; and (5) “Improving public sector management.”¹⁶⁴ Political accountability is an effective deterrent to public corruption.¹⁶⁵ The rise in political accountability increases the risk of detection and officials with high levels of accountability are less willing to participate in corruption.¹⁶⁶ The World Bank denotes several means of accomplishing greater accountability.¹⁶⁷ For instance, political competition is an effective means of reducing corruption because government corruption is more likely to be exposed when strong political competition exists.¹⁶⁸ Opposing political parties fulfill a watchdog role by exposing corruption in an attempt to damage the reputation of the other party.¹⁶⁹ Campaign finance regulation is another method for reducing corruption.¹⁷⁰ Such regulation ideally includes: (1) publicizing all donations, sources of revenue, and expenditures; (2) prohibiting the use of government resources for political purposes; (3) reducing the necessary costs of campaigning; (4) considering public funding of political campaigns; (5) encouraging neutrality in public service, i.e., discouraging financial support of a party as a means of securing employment in the public sector; (6) limiting types of donors; and (7) establishing a campaign oversight commission to ensure compliance with all regulations.¹⁷¹ The World Bank’s concern with regulation of the political process is due to the fact that the elected officials are often those responsible for appropriating funds provided by the Bank, and such regulations should decrease

160. *Id.* at 481.

161. Bannon, *supra* note 22.

162. *Id.*

163. *Id.*

164. *Anticorruption*, *supra* note 16.

165. The World Bank Group, *Anticorruption: Political Accountability*, at <http://www1.worldbank.org/publicsector/anticorrupt/politicalaccountability.htm> (last visited Apr. 13, 2004) [hereinafter *Political Accountability*].

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Political Accountability*, *supra* note 165.

the risk of corruption among elected officials.¹⁷²

A concerned, active civil society is an essential component of any successful anti-corruption approach.¹⁷³ Individual citizens working within civil society groups can play a vital role in monitoring or investigating corruption within the government or the private sector.¹⁷⁴ An active civil society aids in combating corruption by increasing public awareness of corruption, establishing and promoting anti-corruption methods, and monitoring government adherence to anti-corruption policies.¹⁷⁵ In those countries that have freedom of press, the media acts as an important tool to expose public corruption.¹⁷⁶

Governments can reduce corruption by enhancing competition within the private sector and limiting the ability of powerful private entities to control the government.¹⁷⁷ A variety of changes will achieve such results. First, governments should eliminate economic policies, which provide for price subsidies that are commonly given at the discretion of government officials.¹⁷⁸ Discretionary power often leads to corruption.¹⁷⁹ Second, an increase in competition is a significant step for maintaining a corrupt-free private sector.¹⁸⁰ Such an increase is achieved through privatization of public services, lowering the bar for entry of new companies, and greater transparency in business relationships and administration.¹⁸¹ Third, effective regulation of utility companies and other industries in markets where competition is naturally more limited is needed as a deterrent to corruption.¹⁸² Fourth, reforming corporate governance curbs opportunities for corruption.¹⁸³ Poorly monitored corporate officers are generally in a better position to act corruptly without being detected.¹⁸⁴ Thus, the World Bank recommends making changes that bring more transparency to corporate governance and employing independent monitors to discourage corruption.¹⁸⁵ Fifth, the existence of business associations has been shown to decrease the likelihood of corruption because such associations often serve as instruments to

172. George & Lacey, *supra* note 11, at 575.

173. The World Bank, *Anticorruption: Civil Society Participation*, at <http://www1.worldbank.org/publicsector/anticorrupt/civilsociety.htm> (last visited Apr. 13, 2004).

174. *Id.*

175. *Id.*

176. *Id.*

177. The World Bank, *Anticorruption: Competitive Private Sector*, at <http://www1.worldbank.org/publicsector/anticorrupt/privatesector.htm> (last visited Apr. 13, 2004).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Competitive Private Sector*, *supra* note 177.

184. *Id.*

185. *Id.*

represent the collective interests of businesses in the formulation of law and policy involving public contracts.¹⁸⁶ Additionally, business associations can act as monitors and protect against competitive disadvantages that public corruption produces.¹⁸⁷

The structure of the government affects the ability to prevent public corruption.¹⁸⁸ Creating restraints within the government through a separation of powers is most effective.¹⁸⁹ Among the different branches of government that are affected by corruption, the judicial branch is often the most harmed.¹⁹⁰ The World Bank approach to fighting corruption requires that the judiciary maintain a high level of independence, competence, and integrity.¹⁹¹ Additionally, the legislature must fulfill its duty to fight corruption by enacting effective anti-corruption laws that are designed to match the needs and capabilities of the respective country.¹⁹² Lastly, the executive branch must enforce the laws and adequately prosecute individuals that are guilty of corrupt actions.¹⁹³

The fifth element of the World Bank's anti-corruption strategy focuses on improving management within the public sector.¹⁹⁴ A crucial step towards decreasing corruption involves replacing patronage with a merit-based system for appointment or promotion.¹⁹⁵ Governments must also consider raising the salaries as an incentive to avoid corruption.¹⁹⁶ The World Bank strategy also advocates enhancing the transparency and accountability in budget management and the administration of customs and taxes.¹⁹⁷

The World Bank Institute ("WBI") handles a considerable amount of the anti-corruption work done by the World Bank. James Wolfensohn, President of the World Bank, officially unveiled the WBI in 1996.¹⁹⁸ Since that time, the WBI

186. *Id.*

187. *Id.*

188. The World Bank Group, *Anticorruption: Institutional Restraints on Power*, at <http://www1.worldbank.org/publicsector/anticorrupt/legal.htm> (last visited Apr. 13, 2004) [hereinafter *Institutional Restraints*].

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. The World Bank Group, *Anticorruption: Public Sector Management*, at <http://www1.worldbank.org/publicsector/anticorrupt/publicsectormanagement.htm> (last visited Apr. 13, 2004).

195. *Id.*

196. *Id.*

197. *Id.*

198. Mr. Wolfensohn stated that the institution would be committed to "help any of our member countries to implement national programs that discourage corrupt practices." World Bank Institute, *What Are Our Origins?*, at <http://www.worldbank.org/wbi/governance/about.html#origins> (last visited Apr. 13, 2004) [hereinafter *Origins*].

has developed anti-corruption programs, which have been tested and accepted as being effective.¹⁹⁹ The WBI is a leading organization in terms of examining and implementing new anti-corruption programs.²⁰⁰ The resulting expansion and evolution of the WBI's program has, in turn, brought about a "broader focus upon action-oriented governance improvements."²⁰¹

2. The Role of the World Bank in Colombia

The World Bank cooperates with Colombia to expose and prevent corruption. The WBI is supporting Colombia in anti-corruption initiatives to improve comprehension of the methods of corruption and create appropriate strategies that may eventually be incorporated into public administration reform.²⁰² The WBI provides action-oriented and participatory programs to promote good governance and curb corruption in its client countries.²⁰³ The WBI has offered the following services to Colombia: workshops/courses on anti-corruption, judicial reform courses, and diagnostic surveys.²⁰⁴ Although some countries resist the World Bank's offers to share anti-corruption information, Colombia readily accepts such guidance.²⁰⁵ The WBI conducted a confidential survey of public officials and government suppliers in an effort to determine the amount and types of corruption in Colombia.²⁰⁶ The survey has received considerable attention; for

199. For example, the WBI offers: courses on controlling corruption, judicial reform programs, diagnostic surveys of governance and anti-corruption, and courses on investigative journalism. In 1998, the University of Utrecht evaluated WBI's program and its impact and generally found positive results. *Id.*

200. *Id.*

201. *Id.*

202. The World Bank Group, *Governance/Anti-Corruption*, at <http://wbln0018.worldbank.org/external/lac/lac.nsf/45b1a64b68f7a2d3852567d6006c364a/9947299068d941c4852567ee00568da9?OpenDocument> (last visited Apr. 13, 2004) (on file with author).

203. *Origins*, *supra* note 198.

204. *Id.* Colombian officials participated in the six-week judicial reform program in 2002. See World Bank Institute, *Legal and Judicial Reform and the Control of Corruption in Latin America and the Caribbean: A Distance Learning Course for Bolivia, Colombia, Ecuador, Guatemala, Mexico, and Peru (23 May–3 July 2002)*, at <http://worldbank.org/wbi/governance/judicial-lac.htm> (last visited Apr. 13, 2004).

205. *Wanted-a Crusade to Purify Life*, THE ECONOMIST, Jun. 16, 2001, at 37.

206. *Id.* The results of the survey were presented at a national anti-corruption forum on Mar. 21, 2002. Programa Presidencial de Lucha Contra la Corrupción, *Memorias del Foro de Lucha Contra la Corrupción [Reflections from the Forum for the Fight Against the Corruption]*, at <http://www.anticorruptcion.gov.co/home/principal.asp?flag1=plantillas1&flag2=1&flag3=270&flag4=0> (May 24, 2002). For results of the survey, see Vicepresidencia de la República de Colombia, el Banco Mundial y Organizaciones No Gubernamentales, *Diagnóstico Acerca de la Corrupción y Gubernamentalidad en Colombia: Elementos para la Construcción de una Estrategia Anti-corrupción [Diagnosis Concerning the Corruption and*

example, the Colombian government has used the survey results as a basis for demonstrating the need to address corruption in the president's 2002-2006 National Development Plan, which was later approved by the Colombian legislature through Law 812 of 2003.²⁰⁷ The relationship between the World Bank and Colombia has produced valuable results thus far and, as such, Colombia should continue to take full advantage of the anti-corruption resources that the Bank offers in order to fully diagnose the problems and implement proven techniques to reduce corruption.

D. The United Nations

1. The United Nations' Response to Corruption

Any attempt to instill a global commitment to anti-corruption will require considerable United Nation ("U.N.") involvement, and the U.N. is fulfilling this requirement by contributing to the development of policies to eliminate corruption.²⁰⁸ In 1996, the U.N. General Assembly passed the Declaration against Corruption and Bribery in International Commercial Transactions.²⁰⁹ The Declaration called on member states²¹⁰ to combat all forms of corruption, and, in particular, to criminalize bribery in international commercial transactions.²¹¹ The U.N. Convention against Transnational Organized Crime (UNTOC) was adopted in November 2000, and as of February 4, 2004, it has been signed by 147 countries and ratified by 60.²¹² The UNTOC entered into force on September 29, 2003.²¹³ Although the UNTOC does not deal exclusively with corruption,

Governance of Colombia: Elements for the Construction of an Anti-corruption Strategy], available at http://www.worldbank.org/wbi/governance/colombia/pdf/col_informefinal2002.pdf (Feb. 7, 2002) [hereinafter *Diagnosis*].

207. *Development Plan*, *supra* note 145; Ley 812 de 2003 [Law 812 of 2003] (Colom.), available at <http://www.presidencia.gov.co/ley812.PDF> (June 27, 2003) (on file with author).

208. Posadas, *supra* note 8, at 375-76. U.N. contributions are discussed below.

209. *U.N. Declaration Against Corruption and Bribery in International Commercial Transactions*, G.A. Res. 51/191, U.N. GAOR, 51st Sess., Annex, U.N. Doc. A/RES/51/191 (1996).

210. The U.N. consists of 191 member states. United Nations, *List of Member States*, at <http://www.un.org/Overview/unmember.html> (last modified Apr. 24, 2003) [hereinafter *U.N. member list*].

211. G.A. Res. 51/191, *supra* note 209, ¶ 1.

212. G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex 1, Agenda Item 105, at 30, U.N. Doc. A/RES/55/25 (2001); see United Nations, *Signatories: Convention Against Transnational Organized Crime*, at http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html (last visited Feb. 4, 2004) [hereinafter *Signatories*].

213. UN News Service, *UN Treaty Against Transnational Organized Crime Enters*

the treaty commits member states to criminalize bribery and *enforce* those laws.²¹⁴ Significantly, the UNCTOC focuses not on statutory enactment, but on statutory enforcement.²¹⁵

Member states of the U.N. are currently in the process of adopting a treaty specifically designed to address corruption. On October 31, 2003, the U.N. General Assembly unanimously approved the U.N. Convention against Corruption.²¹⁶ A conference was held in Merida, Mexico from December 9th-11th of 2003 for the purpose of signing the treaty.²¹⁷ Officials from nearly one hundred nations gathered to sign the Convention.²¹⁸ The U.N. Convention against Corruption will take effect upon being ratified by the legislatures of at least thirty signatory nations.²¹⁹

The goal of the U.N. Convention against Corruption is to both strengthen international efforts to fight corruption and complement existing domestic and international programs.²²⁰ In general, the Convention contributes to anti-corruption efforts by: (1) requiring governments to criminalize bribery of domestic and foreign public officials and other corruption-related acts; (2) requiring governments to enact a variety of measures to prevent corruption, including measures that promote integrity among public officials and increase civil society participation in combating corruption; (3) providing for international cooperation, which will allow for extradition of persons, the exchange of evidence, and the recovery of assets unlawfully acquired by corrupt government officials; and (4) creating a method for countries to monitor implementation of the Convention, share expertise, and provide technical support relating to anti-corruption efforts.²²¹ In certain respects, the U.N. Convention patterns other preexisting programs such as the IACAC. Nevertheless, it is too early to determine what results this first global commitment to fight corruption will produce.

into *Force,* *available* *at*
<http://www.un.org/apps/news/storyAr.asp?NewsID=8389&Cr=organized&Cr1=crime#>
 (Sept. 29, 2003).

214. Nagle, *supra* note 91, at 1666-67.

215. *Id.* at 1667-68.

216. G.A. Res. 58/4, U.N. GAOR, 58th Sess., at 2, U.N. Doc. A/RES/58/4 (2003).

217. Press Release, U.S. Dep't of State, Ashcroft Decries Corruption as "Tax on the Poor" (Joins Officials to Sign U.N. Anti-Corruption Convention) (Dec. 11, 2003), *available at* 2003 WL 64739428 [hereinafter Anti-Corruption Convention]

218. U.N. Office on Drugs and Crime, *Signatories to the UN Convention Against Corruption*, at http://www.unodc.org/unodc/crime_signatures_corruption.html (last visited Apr. 6, 2004).

219. Anti-Corruption Convention, *supra* note 217.

220. Press Release, U.S. Dep't of State, Signing of the U.N. Convention Against Corruption (Dec. 10, 2003), *available at* 2003 WL 64739391.

221. *Id.* See also *Report of the Ad Hoc Committee for the Negotiation of a Convention Against Corruption on the Work of Its First to Seventh Sessions*, U.N. GAOR, 58th Sess., Annex, at 24-59, U.N. Doc. A/58/422 (2003).

The U.N. Global Programme against Corruption was established by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention (now the Office of Drugs and Crime) to help prevent corruption ranging from the international level to municipal levels.²²² The Global Programme consists of both a research component and a technical cooperation component.²²³ The research component provides the U.N. with up-to-date information about corruption trends that will help to establish proper anti-corruption methods.²²⁴ The purpose of the technical cooperation component is to assist member states in building or strengthening their ability to prevent, detect, and combat corruption.²²⁵ The Global Programme developed pilot projects in select countries for the purposes of studying current corruption trends and testing new tools and approaches for fighting corruption.²²⁶ The pilot projects are an integral component of the Global Programme that could provide information that would prove crucial to addressing corruption.²²⁷

2. Application of U.N. Policies in Colombia

As a member state of the U.N., Colombia adheres to the Declaration against Corruption and Bribery in International Commercial Transactions.²²⁸ As of February 4, 2004, Colombia has not ratified the UNCTOC, although it signed the treaty on December 12, 2000.²²⁹ Colombian delegates actively participated in the negotiating process of the Ad Hoc Committee for the Negotiation of a Convention against Corruption²³⁰ and Colombia signed the U.N. Convention

222. U.N. Office on Drugs and Crime, *Corruption*, at <http://www.unodc.org/unodc/corruption.html> (last visited Apr. 6, 2004) [hereinafter UNODC].

223. U.N. Office for Drug Control and Crime Prevention, *Global Programme against Corruption: an Outline for Action 2* (Feb. 1999), available at http://www.unodc.org/pdf/crime/corruption_programme.pdf.

224. *Id.*

225. *Id.* at 3.

226. UNODC, *supra* note 222.

227. *Id.*

228. Colombia has been a member of the U.N. since 1945. See *U.N. member list*, *supra* note 210. Colombia has enacted laws prohibiting bribery and substantially complies with the Declaration. See *infra* Part III.A.

229. *Signatories*, *supra* note 212.

230. As noted previously, Dr. Héctor Charry Samper, Colombia's ambassador to the U.N., was the Chairman of the Ad Hoc Committee. Other Colombian delegates in the prior sessions were Dr. Lorenzo Octavio Calderón Jaramillo, the former Director of the Presidential Program to Combat Corruption, and Dr. Carlos Eduardo Mejía Escobar, a judge on the Supreme Court of Justice. Programa Presidencial de Lucha Contra la Corrupción, *La Convención Global Contra la Corrupción de las Naciones Unidas* [*The United Nations Global Convention Against Corruption*], available at <http://www.anticorruption.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=92>

against Corruption on December 10, 2003.²³¹ The U.N. Convention against Corruption, the UNCTOC, and the IACAC represent the major multilateral anti-corruption treaties that Colombia has signed.

In 2002, Colombia was selected as one of the countries to participate in the pilot project of the U.N. Global Programme against Corruption.²³² The project, with a budget of \$500,000, lasted approximately eighteen months, and, during that time, the U.N. provided the Colombian government with assistance in fighting corruption.²³³ One purpose of the project was to allow the U.N. to test new tools and approaches to fight corruption in an actual environment where corruption permeates society and the government.²³⁴ An additional objective of the project was “to increase the capacity and integrity of government institutions, including national prosecutors, through the implementation of integrated anti-corruption reforms in three pilot jurisdictions. By introducing focused prevention and sanction mechanisms, the project aims to strengthen anti-corruption efforts within the public and private sector nationwide.”²³⁵ Pasto, Manizales, and Ibagué were the three pilot jurisdictions chosen within Colombia.²³⁶ The results of the pilot project in Colombia will help the U.N. construct a National System of Integrity to Combat Corruption (an organized plan to fight public corruption), which will be replicated in other Latin American nations.²³⁷ As of February 11, 2004, the author had not found any published results of the pilot project in Colombia. It is yet to be determined what effect the U.N. Convention against Corruption will have on Colombian corruption. It is likely that Colombia would benefit from the international support that the Convention provides and the Colombian legislature should ratify the treaty on that basis, if for no other reason.

E. The Inter-American Development Bank

1. The Inter-American Development Bank Guidelines

The purpose of the Inter-American Development Bank (“IDB” or “the

(June 19, 2002).

231. U.N. Office on Drugs and Crime, *supra* note 218.

232. Questionnaire, *supra* note 96, ch. (5)(2)(d).

233. Press Release, U.N. Information Service, Colombia Launches Anti-Corruption Programme (Jul. 9, 2002), at http://www.unodc.org/unodc/en/press_release_2002-07-09_2.html.

234. *Id.*

235. *Id.*

236. Programa Presidencial de Lucha Contra la Corrupción, *Misión de la ONU se Reunió con el Programa Presidencial [U.N. Mission Met with the Presidential Program]*, available at <http://www.anticorruccion.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=87> (May 10, 2002).

237. Questionnaire, *supra* note 96, ch. (5)(2)(d).

Bank”) is to promote the economic and social advancement of its borrowing member nations.²³⁸ Corruption “undermines such development and diminishes the support the Bank can provide in its activities in the region.”²³⁹ In 1996, the shareholders of the IDB agreed to a mandate requiring the institution to take a more active role in promoting government modernization of the member nations and strengthening civil society.²⁴⁰ The mandate combined with the IDB’s explicit purpose gave the institution a firm basis “to support member country efforts to attack the causes and effects of corruption.”²⁴¹

The IDB’s anti-corruption approach entails three separate but related areas: (1) maintaining integrity and transparency within the Bank; (2) ensuring that projects financed by the IDB are free of corruption; and (3) supporting state efforts to combat corruption.²⁴² The IDB has established safeguards to ensure that the institution will maintain its credibility and integrity by eliminating the risks of corruption.²⁴³ The IDB relies on its personnel policies, including a Code of Ethics, to maintain proper, non-corrupt conduct.²⁴⁴

The risk of corruption in IDB-financed projects is a major concern for both the IDB and its borrowing member nations.²⁴⁵ To make certain that IDB financial aid is not affected by corruption, the IDB takes affirmative steps at each stage of a project to prevent corruption.²⁴⁶ The initial phase of any project begins with the development of a Country Paper that provides the IDB with necessary information about the country.²⁴⁷ For example, the Country Paper discusses the development needs of the country and the opportunities for assistance from the IDB.²⁴⁸ The Country Paper also describes the effectiveness of the government.²⁴⁹ “Corruption will be addressed in the Country Paper if the country and the Bank find it to be a restriction to economic and social development or to the impact of a Bank lending program in a particular country.”²⁵⁰

238. INTER-AMERICAN DEVELOPMENT BANK, STRENGTHENING A SYSTEMIC FRAMEWORK AGAINST CORRUPTION FOR THE INTER-AMERICAN DEVELOPMENT BANK 2 (Feb. 2001), available at <http://www.iadb.org/leg/Documents/Pdf/Corruption-EN.pdf> [hereinafter IDB FRAMEWORK].

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at 3.

243. For example, “[t]here is a mechanism for employee recourse, including the Ombudsman, the Conciliation Committee, and the Administrative Tribunal, so that any allegations of personnel policy violations are dealt with properly” *Id.* at 3-4.

244. IDB FRAMEWORK, *supra* note 238, at 3-4.

245. *Id.* at 7.

246. *Id.* at 7-10.

247. *Id.* at 7.

248. *Id.*

249. *Id.*

250. IDB FRAMEWORK, *supra* note 238, at 7.

“Allegations of corruption should not paralyze the Bank’s assistance, for then the Bank would be contributing to worsening the conditions for economic and social development.”²⁵¹ The IDB examines every concern of corruption in a step-by-step approach to determine whether a particular project should be funded, rather than avoiding every project that presents such a risk.²⁵² “[E]vidence of corruption may result in a decision not to proceed with an operation or to structure it in such a manner that concerns will be credibly addressed during the project cycle.”²⁵³ The IDB recognizes that public corruption is the result of inadequate government and that, often, an analysis of the existing government is required.²⁵⁴ Whenever a government agency is deemed incapable of managing an IDB program, the IDB considers alternative entities responsible for project execution.²⁵⁵ For instance, the IDB relies on various independent entities such as NGOs, financial institutions, academic institutions, civil society organizations, and religious entities to bear the responsibility for executing or monitoring IDB projects.²⁵⁶

Methods for monitoring and detecting corruption pervade an IDB project.²⁵⁷ Specifically, the IDB branches within each country play a vital role by ensuring that programs are carried out correctly and free of corruption.²⁵⁸ The IDB may suspend disbursements or cancel a program if there is a strong reason to believe that a program is being executed corruptly.²⁵⁹ “Strict adherence to the Bank’s procurement policies and guidelines has contributed to minimizing corruption during project execution.”²⁶⁰

The IDB does not limit its anti-corruption efforts to only those activities directly involving the IDB. Rather, borrowing member states commonly refer to the IDB for support in their own efforts to combat corruption.²⁶¹ IDB-funded projects “have supported public regulatory agencies, consumer protection agencies, and the offices of ombudsmen.”²⁶² The IDB supports countries in a number of ways, including monetary assistance, developing specific programs or initiatives to fight corruption, and assisting nations with their attempts to harmonize their domestic laws with international anti-corruption measures.²⁶³

251. *Id.* at 8.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. IBD FRAMEWORK, *supra* note 238, at 8.

257. *See id.* at 10.

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.* at 11.

262. IBD FRAMEWORK, *supra* note 238, at 11.

263. *Id.* at 11-13.

2. The IDB in Colombia

Colombia, a borrowing member of the IDB,²⁶⁴ has used IDB assistance to combat corruption.²⁶⁵ In 1995, the IDB approved the Social Solidarity Network (“SSN”) loan to aid the poor in numerous Colombian municipalities.²⁶⁶ The SSN staff was concerned about the potential for corruption in light of the questionable transparency of the process for selecting beneficiaries of the loan and due to the absence of a method for obtaining feedback on the loan implementation structure.²⁶⁷ In response to this concern, the IDB, the Universidad de los Andes (a Colombian university), and the SSN staff designed an innovative plan wherein 150-200 Colombian college students spent a semester monitoring all aspects of the SSN project in various towns.²⁶⁸ The students gathered information, which was sent to the Universidad de los Andes where experts used it for monitoring and evaluation.²⁶⁹ The success of the plan permitted the IDB to use it, or similar plans, in subsequent projects.²⁷⁰

The IDB and Colombia are working together to reduce the potential for corruption by improving the methods of governance.²⁷¹ For example, a program was developed with the objective of strengthening the Controller’s Office and the Auditor General’s Office.²⁷² Thus, the IDB, in effect, is helping Colombia improve fiscal control and establish a reliable means of both monitoring government spending and reporting corruption.²⁷³ However, Colombia’s experiences with the IDB have not always been positive. In April 2000, the IDB suspended the disbursement of a US \$6 million loan to Colombia after a parliamentary corruption scandal was discovered.²⁷⁴ Such drastic measures are

264. In 2003, the IDB approved four loans to Colombia that totaled over US \$1.8 billion. Overall, the IDB has made 196 loans to Colombia totaling over US \$10.9 billion. Inter-American Development Bank, *Colombia and the IDB*, at <http://www.iadb.org/exr/country/eng/colombia/> (last visited Apr. 7, 2004).

265. IDB FRAMEWORK, *supra* note 238, at 9, 12.

266. *Id.* at 9.

267. *Id.*

268. The structure designed by these entities was called REUNIRSE and the program in which the students specifically participated was named Opción Colombia. *Id.*

269. *Id.*

270. *Id.*

271. *See id.* at 12.

272. *Id.*

273. *See id.*

274. The scandal allegedly involved about 550 questionable contracts signed by members of the legislature one of which included a payment of more than \$49,000 for a new toilet. *Colombia: IADB suspends payments due to corruption scandal*, TI NEWSL. (Transparency Int’l, Berlin, F.R.G.), June 2000, available at <http://www.transparency.org/newsletters/2000.2/reports.html#colombia>.

necessary and effective because they force the government to “wake up” and appropriately address the corruption problem.

Overall, the relationship between Colombia and the IDB is a productive one that forces the country to address its corruption, and allows for assistance from the IDB. It is clear from the substantial loan amounts that Colombia relies on the IDB for financial aid.²⁷⁵ It is also apparent that Colombia needs to continue taking advantage of the anti-corruption assistance that the IDB is willing to offer.

III. COLOMBIA’S EFFORTS TO COMBAT CORRUPTION

“The global battle against corruption is the sum of the approaches of individual States.”²⁷⁶ The analysis of Colombia’s anti-corruption efforts is divided among four bodies—the legislature, the executive, the courts, and the citizenry—that, individually, play an important part in the anti-corruption movement. As background, it is helpful to understand that the Colombian Constitution was patterned after the U.S. Constitution.²⁷⁷ As a result, the Colombian government closely resembles its United States counterpart.²⁷⁸ For the purposes of this Note, the primary difference among the three branches of government is that the judicial branch in Colombia has had a more restricted, and perhaps, subservient role.²⁷⁹

A. The Role of the Legislature

1. The Legislature and Relevant Colombian Laws

The Constitution empowers the Colombian Congress to reform the Constitution and enact laws.²⁸⁰ The 271 members of Congress are directly elected to four-year terms.²⁸¹ Periodic approval rating surveys indicate that Congress “has

275. See *supra* note 264 and accompanying text.

276. Samper, *supra* note 1, at 149.

277. Luz Estella Nagle, *Evolution of the Colombian Judiciary and the Constitutional Court*, 6 IND. INT’L & COMP. L. REV. 59, 68-69 (1995). In this Note, “Constitution” refers to the Colombian Constitution. Any reference to the U.S. Constitution will be denoted as “U.S. Constitution.”

278. *Id.* at 69.

279. The limited role of the judiciary is a common characteristic of Latin American governments. Typically, the executive branch assumes the dominant role followed by the legislature with the judicial branch at the bottom. The uneven distribution of powers has its origin in the institution established during the Spanish colonial era. See Felipe Saez Garcia, *The Nature of Judicial Reform in Latin America and Some Strategic Considerations*, 13 AM. U. INT’L L. REV. 1267, 1275, 1287 (1998); see also Luz Estella Nagle, *The Cinderella of Government: Judicial Reform in Latin America*, 30 CAL. W. INT’L L.J. 345, 358-60 (2000).

280. Colombia Report, *supra* note 33, at 17.

281. The Senate has 102 members and the Chamber of Representatives has 169

lost its prestige, is corrupt and inoperable.”²⁸² In a survey conducted by the Office of the Vice President of Colombia and the World Bank, 71% of those polled believed that the Colombian Congress was completely dishonest; the percentage was higher than any other public agency.²⁸³ Ironically, the legislature, deemed to be the most corrupt agency in the government, has actually enacted fairly adequate anti-corruption laws. The Constitution and subsequent laws enacted by the legislature contain several provisions that establish the proper standard of conduct for public officials and prohibit corruption. For example, Article 6 provides that: “private individuals are only answerable for violations of the Constitution or of statutory law. Public officials, in addition to being answerable for such offenses, are answerable for failing to act or for abusing their authority in the course of their government duties.”²⁸⁴ Similarly, Article 209 states that, “public administration exists to serve the common good and is based on the principles of equality, morality, efficacy, economy, timeliness, impartiality, and public dissemination achieved through decentralization, delegation and deconcentration of functions.”²⁸⁵ The basic code of conduct for public officials is contained in the Uniform Disciplinary Code, which states in pertinent part:

Subject to disciplinary action for non-compliance with these provisions, public officials, in order to safeguard the public morality, transparency, objectivity, legality, honesty, loyalty, . . . efficacy and efficiency that they are required to observe in carrying out their jobs, responsibilities or functions shall, in accordance with the Constitution and statutory law, perform their duties, observe relevant prohibitions, and act in accordance with the regime governing disqualification, ineligibility, impediments and conflicts of interest established in the Constitution and in the law.²⁸⁶

members. *Id.*

282. “This perception is reinforced because, with exceptions, the members of the five most recent Chamber directive tables have come under investigation” for corruption. *Id.* at 18.

283. Diagnosis, *supra* note 206, at 36.

284. CONSTITUCIÓN POLÍTICA DE COLOMBIA DE 1991 [Constitution] art. 6 (Colom.).

285. *Id.* art. 209.

286. Código Disciplinario Único [Uniform Disciplinary Code], Ley 734 de 2002 [Law 734 of 2002] (Colom.) available at <http://www.anticorruccion.gov.co/paginas/LEY7342002CODIGODISCIPLI.doc> (May 2, 2002); Questionnaire, *supra* note 96, ch. (1)(1)(a) (translating the text of the Uniform Disciplinary Code). Additionally, the Penal Code, contained in Law 599 of 2000, criminalizes many forms of corruption such as: embezzlement, making improper contracts, illicit enrichment, subverting the course of justice, and transnational bribery. See Questionnaire, *supra* note 96, ch. (1)(1)(a).

In terms of specifically addressing the problem of corruption, the legislature has passed three laws in the past decade.²⁸⁷ Law 190 of 1995, the Anti-Corruption Statute, endeavors to combat corruption by regulating public service, criminalizing certain corrupt acts, such as bribery and embezzlement, and providing for increased access by research agencies to the government financial system.²⁸⁸ The Anti-Corruption Statute provides a foundation upon which Colombia can prevent and sanction acts of corruption. However, the existence of an adequate law is not the problem. Enforcement of the statute has been very disappointing.²⁸⁹

Law 80 of 1993, the Public Contracting Statute, creates procedural safeguards aimed at promoting free competition, transparency, advertising, and objective selection in public contracting.²⁹⁰ The statute allows for exceptions to the regulation in cases of urgency or when the monetary amount of the contract is small.²⁹¹ Through Law 412 of 1997, the legislature approved and adopted the provisions of the IACAC.²⁹² In addition to laws criminalizing acts of corruption, Congress has taken steps to ensure that the public can monitor government agencies through freedom of information laws.²⁹³

2. An Evaluation of the Colombian Legislature and Laws

The role of the Colombian Congress in the fight against corruption is problematic; Colombia not only requires the enactment of effective anti-corruption laws, but it also needs legislators who are both competent and free from corruption. Indeed, one legal scholar observed that reform is very difficult where any new regulations “must be carried out by corrupt government officials

287. Colombia Report, *supra* note 33, at 10-11.

288. The statute regulates public servants' recruitment, incentives, and income. Besides criminalizing different forms of embezzlement and bribery, the law also prohibits the illegal use of privileged information. *Id.* at 11. The Anti-Corruption Statute is also available on-line. Ley 190 de 1995 [Law 190 of 1995] (Colom.), available at <http://www.anticorruccion.gov.co/paginas/LEY1901995CONGRESODELAREPUBLICA.doc> (June 6, 1995).

289. Colombia Report, *supra* note 33, at 11.

290. *Id.* As noted previously, an attempt to reform Law 80 of 1993 has been undertaken in order to more fully comply with the IACAC. See *supra* note 104 and accompanying text.

291. Colombia Report, *supra* note 33, at 11. Conceivably, the exception for contracts with low monetary amounts could still create a problem. Illegal contracts finding their way through the loophole could add up to significant amounts. However, the government seems willing to accept this risk for the sake of added efficiency.

292. *Id.*

293. For example, Article 73 of the Constitution, Law 489 of 1998, and Law 57 of 1985 generally provide for public access to government information with some exceptions. Questionnaire, *supra* note 96, ch. (4)(2)(a).

who, not surprisingly, have the fewest incentives to initiate such changes.²⁹⁴ Obviously, laws criminalizing corrupt acts such as bribery, illicit enrichment, or money laundering are necessary to any anti-corruption movement; however, laws supporting and encouraging corrupt-free government are also necessary.²⁹⁵ The Colombian legislature has enacted laws that prohibit various acts of public corruption.²⁹⁶ Additionally, having adopted the IACAC and its corresponding provisions should strengthen domestic laws by providing regional support for enforcement.²⁹⁷ Colombian law gives citizens the freedom to access government information.²⁹⁸ But is that enough? Congress must continue to address corruption by enacting laws that will increase the risks of corruption and ensure that the existing laws become “more than just ink on paper.”²⁹⁹ New laws favoring greater civil society participation and providing for more transparency in government decisions would be beneficial.³⁰⁰

B. The Role of the Executive Branch

1. Presidential Program to Combat Corruption

In November 1998, then-President Pastrana established the Presidential Program to Combat Corruption (Presidential Program) in order to correct problems in the public administration that made it susceptible to corruption.³⁰¹ Because the Colombian government places such high priority on fighting corruption, the Vice President coordinates the program.³⁰² The Presidential Program is the primary organization responsible for implementing government programs designed to reduce corruption in public administration.³⁰³

The general objective of the Presidential Program is to design and implement mechanisms to prevent, control, and sanction corrupt acts in

294. Nagle, *supra* note 91, at 1688.

295. *Institutional Restraints*, *supra* note 188.

296. *See generally* Questionnaire, *supra* note 96.

297. Sutton, *supra* note 58, at 1472-73.

298. *See supra* note 293.

299. LUZZANI, *supra* note 41, at 182.

300. *Political Accountability*, *supra* note 165.

301. Programa Presidencial de Lucha Contra la Corrupción, *Quienes Somos [Who We Are]*, at <http://www.anticorrupcion.gov.co/home/principal.asp?flag1=plantillas1&flag2=1&flag3=152&flag4=0> (Jan. 8, 2004) [hereinafter *Who We Are*]; LUZZANI, *supra* note 41, at 177.

302. *Who We Are*, *supra* note 301; Although the Presidential Program is primarily controlled by the Office of the President, it is also accountable to other offices such as the Attorney General. *See* Programa Presidencial de Lucha Contra la Corrupción, *Entidades de Control [Entities of Control]*, at <http://www.anticorrupcion.gov.co/home/principal.asp?flag1=plantillas1&flag2=1&flag3=27&flag4=0> (Aug. 20, 2001).

303. *Who We Are*, *supra* note 301.

Colombia.³⁰⁴ The Presidential Program strives to enlist public servants that are dedicated to ethical values, which will permit them to serve the public with efficiency, effectiveness, and transparency by 2006.³⁰⁵ The Presidential Program has four strategic objectives: (1) improve the efficiency and transparency of public entities; (2) promote government employee conduct based on ethical principles and values; (3) strengthen civil society participation; and (4) establish formal methods of cooperation between government institutions and between the government and civil society to combat corruption.³⁰⁶

Thus far, the Presidential Program has made some advances in the fight against corruption.³⁰⁷ For example, in order to strengthen civil society participation, the Presidential Program developed a project entitled *Colombiemos* to create a network of citizens dedicated to constructing and preserving a more just and honest Colombia.³⁰⁸ As of February 7, 2004, more than 13,000 people had joined *Colombiemos*.³⁰⁹ *Colombiemos* acts as a forum by which citizens have the opportunity to learn more about the fight against corruption and actively participate in anti-corruption efforts.³¹⁰ Specifically, the *Colombiemos* Bulletin and Web page provide citizens with information related to anti-corruption including tools that citizens can use to monitor public administration.³¹¹ Through *Colombiemos*, citizens may participate in oversight groups assigned to monitor investment activities or contracts made by governmental entities.³¹² The Presidential Program's own Web site is another tool used to enhance civil society participation in fighting corruption.³¹³ The Web site contains substantial information about anti-corruption including statutes, speeches, links to other anti-corruption Web sites, and a link to report suspected corruption.³¹⁴

304. Programa Presidencial de Lucha Contra la Corrupción, *Misión, Visión y Objetivos Estratégicos* [*Mission, Vision, and Strategic Objectives*], at <http://www.anticorruccion.gov.co/home/principal.asp?flag1=plantillas1&flag2=1&flag3=17&flag4=0> (Jan. 15, 2003).

305. *Id.*

306. *Id.*

307. For a summary of the results and progress of the Presidential Program from August 7, 2002 until January 7, 2003, see *Summary*, *supra* note 132.

308. See *Colombiemos*, at <http://www.anticorruccion.gov.co/colombiemos/> (last visited Feb. 11, 2004).

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. See Programa Presidencial de Lucha Contra la Corrupción, *Pactos por la Transparencia* [*Transparency Pacts*], at <http://www.anticorruccion.gov.co/home/index.asp> (last modified Jan. 15, 2004).

314. See *id.* On the first day that the reporting system was officially announced to the public, 18 reports were submitted on the website. Centro Nacional de Noticias del Estado, *73 Denuncias en Primer Día del Programa Anticorrupción* [*73 Accusations in the First Day of the Anticorruption Program*] (Jan. 27, 2003), available at

One criticism of both *Colombiemos* and the Presidential Program Web site is that both rely on the Internet and computers. Thus, important anti-corruption resources often are available only to well-educated citizens with the financial means to own a computer. This condition greatly limits the extent of participation by the general population. Furthermore, it prevents involvement by those who are most affected by corruption—the poor.

2. Other Efforts to Stop Corruption

In furtherance of his promise to end public corruption, President Álvaro Uribe issued Decree 2170 to establish additional mechanisms designed to reduce the risk of corruption.³¹⁵ Decree 2170 provided that citizen oversight groups³¹⁶ shall regulate the hiring processes of public entities.³¹⁷ The Decree also provided for citizen oversight in public contracting, and, additionally, it required government entities to publish contract terms (tender conditions) on the Internet or through some other public circulation method.³¹⁸ As noted previously, the President's National Development Plan for 2002-2006 commits the government to take active steps towards reducing corruption.³¹⁹

3. An Evaluation of the Executive Branch

The published results of the efforts by the executive branch appear to demonstrate that some progress is being made.³²⁰ However, some caution is in order when relying on information provided by the Colombian government. As demonstrated, the government itself is corrupt and, as such, it is obviously a biased source for information regarding corruption within the government. Thus, Colombian journalists and groups such as Transparency International play a helpful role in determining the true status of corruption in the country.

Colombian newspapers offer a contrasting image of the government's

<http://www.presidencia.gov.co/cne/2003/enero/27/05212003.htm>. The author was unable to find any information concerning the outcomes of the numerous reports.

315. Centro Nacional de Noticias del Estado, *Gobierno Fija Normas para Evitar Corrupción en Contrataciones* [Government Establishes Measures to Avoid Corruption in Contracting] (Oct. 1, 2002), available at

<http://www.probidad.org.co/normas.htm#GOVERNMENT>.

316. Citizen oversight groups are discussed below. See *infra* Part III.D.

317. Centro Nacional de Noticias del Estado, *supra* note 315.

318. Programa Presidencial de Lucha Contra la Corrupción, Uribe: "*Es Hora de Aplicar Decreto Anticorrupción*" [Uribe: "*It Is the Hour to Apply the Anticorruption Decree*"],

at <http://www.anticorruccion.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=160&barra=1> (Jan. 9, 2003).

319. *Development Plan*, *supra* note 145.

320. See *Summary*, *supra* note 132.

progress. For example, an editorial piece in *El Pais* observed that the government anti-corruption programs have generally failed due to the disorganization and the lack of enforceability.³²¹ Similarly, they tend to fail because the government authorities always arrive late and almost never punish those responsible.³²² The Colombian government points to certain objective results, but there is little statistical proof available to show that the efforts by the President and those under his authority have produced any significant changes.³²³ President Uribe has made the fight against corruption an important goal of his administration³²⁴ and he must maintain anti-corruption as one of its important objectives. The Presidential Program in collaboration with *Colombiemos* has the potential to bring substantial results in the fight against corruption.

C. The Role of the Judicial System

1. Obstacles to Upholding the Laws

While the legislature has taken steps to enact anti-corruption laws, the responsibility of applying those laws has fallen upon the Colombian courts.³²⁵ “The courts are the principal factor in anti-corruption. If the courts do not act then the principle [sic] factor in prevention is lost.”³²⁶ “A country’s legal system—its laws and regulations *as well as the processes and institutions through which they are applied*—is vital for addressing corruption”³²⁷ However, the traditional Latin American role of the judiciary, along with the highly political selection process, has often precluded effective enforcement.³²⁸ Unfortunately, some judicial attempts to sanction public corruption have actually been opposed by the remaining branches.³²⁹ For example, in 1997, various politicians and government officials connected to the administration of former President Ernesto Samper, including Samper himself, were accused of illicit enrichment from the Cali Cartel.³³⁰ Many of them, including a former Attorney General, were tried and

321. *Contra la Corrupción*, EL PAIS (Cali), Aug. 13, 2003, available at <http://www.probidad.org.co/prensa.htm>.

322. *Id.*

323. See generally Questionnaire, *supra* note 96.

324. See *supra* notes 315-319.

325. The judges apply the rules created by the legislative branch. Nagle, *supra* note 277, at 77.

326. Maria Dakolias & Kim Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*, 18 WIS. INT’L L.J. 353, 375 (2000).

327. Bannon, *supra* note 22 (emphasis added).

328. See Saez Garcia, *supra* note 279, at 1287. Colombian courts lack a considerable amount of judicial independence from the other branches due to the political nature of the selection process as well as the tremendous pressure and influence that the other branches are able to exercise over the courts. Nagle, *supra* note 279, at 368-72.

329. Nagle, *supra* note 279, at 372.

330. *Id.*

convicted for their corrupt acts.³³¹ Prior to the scandal, the other branches praised the courts for their efforts, but when government officials came under investigation, politicians harshly criticized the courts.³³² Sadly enough, some members of the legislature attempted to abolish the crime of illicit enrichment.³³³

Another obstacle to judicial enforcement of anti-corruption laws, or any laws, is corruption within the judicial system itself.³³⁴ “Being a judge in Colombia does not rank very high in terms of dignity and this fact has a harmful affect on the legitimacy, credibility and dignity of the justice system.”³³⁵ Corruption affects the quality of jurisprudence in several ways. For example, the legal system can become very unpredictable when outcomes are based on bribes rather than the law and “[o]ne of the important characteristics of a judiciary is that its opinions be consistent and predictable.”³³⁶ Corruption within the justice system has a domino effect; it produces more corruption both within the courts and in other sectors of government as individuals realize that they can commit acts of corruption with impunity.³³⁷ Public corruption undermines political legitimacy and breeds distrust of the government.³³⁸ If measures do not exist to prevent and sanction corruption in the courts, “corruption will never be punished because individuals and other branches of government are confident that they are free to do as they please.”³³⁹

2. Judicial Reform

Colombia must take measures to ensure that integrity and legitimacy become the foundation upon which the judicial branch can begin to deal with corruption. In order to establish such a foundation, scholars have recommended several solutions. First, greater judicial independence is vital.³⁴⁰ Judicial reform resulting in a more independent judiciary with greater power to enforce its decisions is crucial to improving anti-corruption efforts within the judicial branch.³⁴¹ The goal is to enable the courts to render independent decisions free of any improper influence from other government agencies.³⁴² Such independence would surely benefit the courts in handling public corruption cases, which inherently implicate government agencies.

331. *Id.*

332. *Id.*

333. *Id.*

334. Dakolias & Thachuk, *supra* note 326, at 363-65.

335. Colombia Report, *supra* note 33, at 17.

336. Dakolias & Thachuk, *supra* note 326, at 364.

337. *Id.* at 363-64

338. *Id.* at 364.

339. *Id.*

340. Nagle, *supra* note 279, at 368.

341. Bannon, *supra* note 22.

342. Nagle, *supra* note 279, at 368-69.

Another recommendation is for greater accountability in the courts.³⁴³ Accountability entails some form of monitoring to ensure that the judicial system is corruption-free.³⁴⁴ One legal scholar argues that public accountability in Latin American courts is futile because “corruption is so intensely woven in the fabric of government.”³⁴⁵ Judges often face the threat of removal if they oppose the executive branch in some way or if their political ideology differs from that of the executive, and public accountability would not make their positions any more or less secure.³⁴⁶ However, if there is to be any reform to achieve greater judicial independence, there should be some form of accountability to the public in order to reduce the risk of corrupt behavior.

Furthermore, the judicial selection process in Colombia should be changed in order to reduce the potential for corruption. Supreme Court judges are appointed in a highly political, non-transparent process from a list compiled by the Superior Council of Judicature and only serve for eight years.³⁴⁷ A more transparent selection process based on merit rather than political influence, which provides for more civilian input and participation is desirable.³⁴⁸

Judicial reform is not the only answer. Although the courts have an essential part in fighting corruption, they cannot overcome the problem alone.³⁴⁹ To successfully combat corruption the courts need enforceable laws enacted by the legislature.³⁵⁰ Additionally, the executive branch must limit the pressure that it places on the judicial branch and allow Colombia, as a whole, to benefit from a separation of powers. Finally, civil society must demand that judges practice integrity and that they be held accountable for their corrupt acts.

D. The Role of Civil Society

1. “Veedurías Ciudadanas”

Citizen oversight bodies (“veedurías ciudadanas”) are associations of citizens that seek to protect the public welfare through participation in government

343. Dakolias & Thachuk, *supra* note 326, at 376-78.

344. There are various groups that could potentially monitor the courts: executive or legislative oversight committees, judicial councils, higher court supervision, and civil society. *Id.* at 379-86.

345. Nagle, *supra* note 279, at 370.

346. *Id.*

347. Nagle, *supra* note 277, at 74. In Latin America, there is typically little transparency in the judicial selection process and the civil society has little or no participation in the process. Saez Garcia, *supra* note 279, at 1291-92.

348. Saez Garcia, *supra* note 279, at 1322-23. “As long as the judiciary selection process remains the same ... the judiciary will remain a branch of government manipulated by external factors and not in full control.” Nagle, *supra* note 279, at 373.

349. Dakolias & Thachuk, *supra* note 326, at 375.

350. *Institutional Restraints*, *supra* note 188.

activities, investigating and reporting suspected corruption, and providing helpful recommendations regarding public resources.³⁵¹ These groups do not require an official organization and may be organized at the will of a few citizens.³⁵² The citizen oversight bodies are constitutionally protected under Article 103 of the Constitution, which provides that:

The state shall contribute to the organization, promotion, and training of professional, civic, labor, community, . . . or broad-interest non-governmental organizations, without prejudice to their autonomy, in order that they may provide mechanisms of democratic representation through various forms of participation, coordination, and oversight and supervision of public administration.³⁵³

Law 134 of 1994 gives further support for the existence of citizen oversight bodies by stating, “[c]ivil organizations may create special citizen oversight bodies or oversight boards at the national level or any sub-national level in order to monitor public administration, its performance or the provision of public services.”³⁵⁴ Law 563 of 2000 expands on the previous laws by explicitly outlining the functions, methods, rights, duties, guiding principles, and restrictions of citizen oversight groups.³⁵⁵ Law 489 of 1998 requires government entities to give full cooperation to citizen oversight groups and provide any support necessary in order to monitor government administration.³⁵⁶ In 2002, the government recognized the importance of citizen oversight bodies by enacting Decree 2170, as previously discussed.³⁵⁷ On November 18, 2003, Congress passed Law 850, with the purpose of regulating citizen oversight groups while also pronouncing the rights and protection to be given such organizations.³⁵⁸ On its face, Law 850 provides substantial government support to civil oversight

351. Confecamaras, *Veedurías Ciudadanas [Citizen Oversight Groups]*, available at <http://www.probidad.org.co/veeduria.htm#Qué> (last visited Apr. 11, 2004).

352. *Id.*

353. CONSTITUCIÓN POLÍTICA DE COLOMBIA DE 1991 art. 103 (Colom.); see Questionnaire, *supra* note 96, ch. (4)(1)(a) (offering an English translation of the text).

354. Ley 134 de 1994 [Law 134 of 1994] (Colom.), available at <http://www.referendo.com.co/Documentos/LEY134-1994.htm> (May 31, 1994); see QUESTIONNAIRE, *supra* note 96, ch. (4)(1)(a) (offering an English translation of the text).

355. Ley 563 de 2000 [Law 563 of 2000] (Colom.), available at http://www.probidad.org.co/ley_563.doc (Feb. 2, 2000).

356. Ley 489 de 1998 [Law 489 of 1998] (Colom.), available at http://www.ins.gov.co/pdf_admon/juridica/otros/o_1998_ley_0489.PDF (Dec. 29, 1998); Questionnaire, *supra* note 96, ch. (4)(1)(a).

357. Decree 2170 was discussed previously. See *supra* Part III.B.2.

358. Ley 850 de 2003 [Law 850 of 2003] (Colom.), available at <http://www.presidencia.gov.co/leyes/2003/noviembre/Ley%20No.%20850.pdf> (Nov. 18, 2003).

groups and confers several powers upon such groups, including, but not limited to: (1) the authority to monitor the allocation of government funds; (2) the right to oversee the public contracting process; (3) the ability to request documents from public officials as a means of ensuring ethical conduct; and (4) the right to inform the general public about advances or developing oversight programs.³⁵⁹

The creation of *Colombiemos* is additional evidence of the Colombian government's recognition that civil society participation is an essential anti-corruption tool.³⁶⁰ On January 27, 2003, the Colombian government officially launched a National Anti-corruption Program under the direction of the Presidential Program with the focus on civil society participation.³⁶¹ On the first day of the program, the government received seventy-three reports of corruption.³⁶² Clearly, civil society participation is on the rise in Colombia, whether through citizens banding together in efforts to monitor public administration, or by individuals courageously denouncing corruption they have witnessed.

2. Increased Civil Society Participation

Civil society participation has increased in Colombia, but there is a definite need for improvement.³⁶³ "The efficiency and transparency of the public force depends, to high degree, on citizen cooperation."³⁶⁴ Colombia not only needs to create more civil society groups, but also must ensure that they remain an active and vital force.³⁶⁵ Greater activity equates to citizens taking more initiative in organizing groups and performing those tasks related to monitoring government entities rather than leaving most of the work to the government.³⁶⁶ In fact, some critics state that the role of civil society is weak because it often fails to take such initiative and relies on efforts started by the Government.³⁶⁷ The reality remains

359. *Id.* art. 15.

360. *Colombiemos* was discussed previously. *See supra* Part III.B.1.

361. Programa Presidencial de Lucha Contra la Corrupción, *Gobierno Lanza Programa de Lucha Contra la Corrupción* [Government Launches Program to Fight Against the Corruption], at <http://www.anticorruptcion.gov.co/home/principal.asp?flag1=plantillas&flag2=1&flag3=166&barra=1> (Jan. 27, 2003).

362. Centro Nacional de Noticias del Estado, *supra* note 314. Twenty-eight reports were made by phone (the "Transparency Line"), 27 were sent by email, and 18 reports were submitted on the website of the Presidential Program. *Id.*

363. *See* Colombia Report, *supra* note 33, at 30.

364. President Álvaro Uribe, Discurso del Presidente de Colombia, Álvaro Uribe Velez, ante la 57^o Asamblea General de las Naciones Unidas [Address by the President of Colombia, Álvaro Uribe Velez, Before the 57th General Assembly of the United Nations] (Sept. 13, 2002), available at <http://www.presidencia.gov.co/discursos/onu.htm>.

365. Colombia Report, *supra* note 33, at 30.

366. *Id.*

367. *Id.* at 31.

that, once citizen oversight groups are formed, there are a number of barriers that these groups confront while trying to monitor public administration; thus, government support is crucial to citizen oversight group existence.³⁶⁸ For instance, citizens often face the following obstacles: denied access to public documents, lack of information about available oversight mechanisms, government-imposed limitations on the production and delivery of information, distrust on the part of public officials.³⁶⁹ Access to government information is vital to civil society participation.³⁷⁰ Unfortunately, dissemination of significant information by public officials is often curtailed; as a result, participation in the process becomes meaningless.

The news concerning the seventy-three reports of corruption in one day is promising information that, perhaps, citizens are learning how to recognize and report corruption.³⁷¹ A 2002 survey showed that only 21% of those polled knew how to report a case of corruption.³⁷² However, the lack of such knowledge was not identified as the cause for failing to report, rather the primary reason for not reporting corruption was a fear of retaliation.³⁷³ Aside from the fear of retaliation, there is evidence that the lack of information and the government's failure to educate the population about oversight methods impedes the role that citizens could play in preventing corruption.³⁷⁴

Civil society participation must increase both in the numbers of participants and the degree of involvement.³⁷⁵ In order for such improvement to occur, the government must be more accommodating to the citizen oversight bodies and provide more incentives for action.³⁷⁶ Ideally, provisions such as Decree 2170 or Law 850 should force many reluctant public officials to permit greater involvement by concerned citizens. Those citizens must take advantage of such opportunities. Citizen oversight bodies must cooperate with the government to inform citizens about oversight mechanisms and proper reporting procedures. Colombians need to report corruption when they observe it and they should not have to fear retaliation for fulfilling a civic duty. Civil society participation in monitoring and reporting corruption has the potential to reduce a substantial amount of corruption. Without such a contribution to the fight against corruption,

368. *See Id.* at 30.

369. *Id.*

370. Nagle, *supra* note 91, at 1677.

371. *See* Centro Nacional de Noticias del Estado, *supra* note 314. This is an encouraging sign that the Government is increasing the availability of clear instructions on the manner to submit a report of corruption. Previously the lack of information was a concern. *See* Colombia Report, *supra* note 33, at 27.

372. Diagnosis, *supra* note 206, at 53.

373. *Id.*

374. *See supra* notes 369 & 372 and accompanying text.

375. Diagnosis, *supra* note 206, at 56.

376. *Id.*

the evil will remain a vivid reality and only continue to spread.³⁷⁷

IV. THE FUTURE OF COLOMBIA

Colombia is currently on the right path towards a future with less corruption. The nation has support from the Organization of American States, and the IACAC has not only prompted Colombia to criminalize transnational bribery, but, more importantly, it has provided the Government with regional support. That support will be crucial in helping to strengthen Colombia's ability to fight both domestic corruption, and corruption that extends beyond the national borders. Although the IACAC is an international measure, one of its greatest benefits is the requirement that member states improve their state-level approach to fighting corruption.

Transparency International created a global consciousness of corruption. The largest NGO dedicated solely to fighting corruption has not only benefited the world in general, but is also leaving its mark on anti-corruption efforts in Colombia. The Colombian government is keenly aware of its ranking in the CPI. TI's mission in Colombia is far from over, and its participation in civil service hiring and the Integrity Pacts should yield positive results for Colombia.

The World Bank, the United Nations, and the Inter-American Development Bank have all assisted Colombia financially in its pursuit of transparency and government integrity. They share their resources of knowledge and, to different degrees, have directly participated in anti-corruption programs within the country. The World Bank survey is a tremendous resource in determining the nature of corruption in Colombia. With the recent signing of the U.N. Convention against Corruption, there is optimism that the member states of the U.N., including Colombia, will someday ratify a global measure to actively address corruption.

International organizations have done an impressive amount of anti-corruption work in Colombia and their efforts have produced results. However, Colombia's greatest progress will be made if municipalities, departments, and the central government all fulfill their commitments to prevent and eliminate corruption. Public officials must be held accountable for their efforts to combat corrupt behavior. The Colombian government is moving forward and President Uribe appears committed to the Presidential Program to Combat Corruption. Although the legislature and courts lack the legitimacy that such entities should possess, future reform and enforcement of anti-corruption laws can potentially redeem those institutions. The citizens of Colombia have a tremendous challenge to set aside indifference, participate in public affairs, and stop the corruption that is stealing their resources, their country, and their future.

377. LUZZANI, *supra* note 41, at 182.