

Background papers | Reform experience

**A review
of anti-corruption reform
measures
in the defence sector
in Colombia**



Transparency International (TI) is the civil society organisation leading the global fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption, and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

For more information, please visit www.transparency.org

The Defence and Security Programme works with governments, defence companies, multilateral organisations and civil society to build integrity and reduce corruption in defence establishments worldwide. The London-based Defence and Security Programme is led by Transparency International UK. Information on Transparency International's work in the defence and security sector to date, including background, overviews of current and past projects, and publications, is available at the TI-UK Defence and Security Programme website: www.ti-defence.org

While acknowledging the debt TI-UK owes to all those who have contributed to and collaborated in the preparation of this publication, we wish to make it clear that Transparency International UK alone is responsible for its content. Although believed to be accurate at this time, this publication should not be relied on as a full or detailed statement of the subject matter.

This publication was made possible thanks to the support from the UK Department for International Development (DFID).

Transparency International UK
Defence and Security Programme
32-36 Loman Street
London
SE1 0EH

+44 (0)20 7922 7969
defence@transparency.org.uk

First published in May 2011.

Author: Jean-Michel Rousseau

Editor: Mark Pyman

Reproduction in whole or in parts is permitted, providing that full credit is given to Transparency International (UK) and provided that any such reproduction, whether in whole or in parts, is not sold unless incorporated in other works.

Report printed on FSC certified paper.

© 2011 Transparency International UK. All rights reserved.

ISBN: 978-0-9569445-6-6

Publisher: Transparency International UK

Design: Maria Gilli

© Cover illustration: Luisa Rivera

Transparency International UK
International Defence and Security Programme
32-36 Loman Street
London
SE1 0EH
United Kingdom

www.ti-defence.org
www.transparency.org.uk

**A review of anti-corruption reform measures
in the defence sector in Colombia**

Contents

Introduction	3
Assessment of the defence procurement process	4
Improved control mechanisms to supervise procurement	5
Administrative reforms to improve transparency	8
TRACKING PROGRESS	8
KEY ELEMENTS OF REFORM	9
Conclusion	10
ENDNOTES	11

Introduction

In recent years both the defence industry as well as governments have been increasingly interested in reform. In fact, we are seeing the implementation of anti-corruption policies and measures in both national and international defence environments. Transparency UK's International Defence and Security Programme is actively engaged in this field.

This paper is the result of an open-source research and interviews with current and past state and non-state actors involved in anti-corruption efforts in the Colombian defence sector. Its purpose is to document a reform process that can be examined by other reform-minded nations.

The following discussion assesses differing types of anti-corruption measures introduced by the Colombian defence establishment. It begins by describing the initial assessment work carried out by *Transparencia por Colombia* (Transparency International's chapter in the country) and Transparency International UK, and concludes by drawing out key elements influencing the degree of success of each reform.



The purpose of this report is to document the Colombian reform process, which can be examined by other reform-minded nations. Credit: istockphoto.

Assessment of the defence procurement process

A first measure was a study carried out in 2004 and 2005 by *Transparencia por Colombia*, Transparency International's local chapter, and Transparency International UK into the procurement procedures used in the Colombian Ministry of Defence and the use of a simplified form of an integrity pact¹ in defence procurement procedures.

The Colombian Ministry of Defence was assessed in a procurement process for combat aircraft, where Transparency International Defence and Security Programme's (TI-DSP) evaluation was deemed "crucial" by civilians involved (although TI-DSP eventually withdrew from the process).ⁱ TI-DSP has already processed this topic and disseminated it in its work.ⁱⁱ However, it is worth underlining that the conducted interviews clearly showed how paramount the political will of the two defence ministers acting during this time period was (one of the ministers was the first female minister of defence in Colombian history. The other one was close to *Transparencia por Colombia* and very receptive to anti-corruption issues).

Altruistic intentions aside, a transparent procurement process was also meant to defuse potential critique given the significant sums involved, and thus politically shield the process. Due to changes in political leadership at the ministry of defence, the process—which had been viewed warily by the military structure—soon stalled and quickly faded

out. Interviewees linked the institutional reticence to the institutional culture, that of an often publicly stigmatised and thus secrecy-oriented ministry.

They also noted that the focus of Transparency International's assessment was on a short-term support for a given procurement process, not on a continuous assessment and follow-up process.

The Colombian Ministry of Defence was assessed in a procurement process for combat aircraft, where Transparency International Defence and Security Programme's (TI-DSP) evaluation was deemed "crucial" by civilians involved.

¹ Defence integrity pacts are a tool to combat corruption at the tendering and contract stage of procurement. They bind all the bidders and the government together in a contract to reduce the possibility of corruption occurring both during and after the tender. The experience of integrity pacts dates from their development in the 1990s in some dozen countries, for example South Korea, Germany, Chile, Argentina, Ecuador, Mexico, Colombia, and Italy. They are an established tool of government—outside of defence—in four countries that are working expensively to address corruption: Colombia, Mexico, Peru and Ecuador. For defence procurement, they are used in India.

Improved control mechanisms to supervise procurement

In the framework of the so-called Democratic Security Policy (*Política de Seguridad Democrática*) of Colombian President Álvaro Uribe Vélez (2002-2010), a special wealth tax (*impuesto al patrimonio*) of 1.2 per cent per annum was levied on financial assets equal or superior to USD 1.3 million.ⁱⁱⁱ The idea was to pay for the necessary equipment upgrade of the Colombian Armed Forces and Police through additional funds, given that the regular funds were mostly destined for the maintenance of existing capabilities.

The ministry of defence was earmarked to receive additional funds equivalent to USD 3.4 billion^{iv} for the time period between 2007 and 2010, 57 per cent of which were designated for investment programmes. Normal funds stood at USD 22.5 billion, of which slightly more than 8 per cent went into equipment procurement. The total investment for the time period between 2006 and 2010 was thus USD 3.7 billion.^v

The main strategic document for this time period, CONPES 3460,^{vi} defined five strategic objectives for the Consolidation Policy of Democratic Security (*Política de Consolidación de la Seguridad Democrática (PCSD) 2007-2010*). One of these was the “creation of modern armed forces with the highest ethical moral standards and the trust and support of the citizenry”. One of the five corresponding action lines (the action lines had a total of 28 plans and programs) was geared at “actions to improve the efficiency and the transparency of the use of public resources”.

In anticipation of the passing of CONPES 3640, the new political leadership at the ministry of defence started implementing an improved decision and monitoring mechanism for procurement—given the significant financial resources involved, the political will

for early and efficient procurement to achieve military results, and the consideration of future expenses for procured weapons systems.

Previous decision and monitoring processes had mostly centred on control groups within each force. This had led to insufficiently transparent decision processes and a very high reliance of the civilian leadership on input from military staff for decision-making.

The new process streamlined procurement, procurement control processes and the civilian leadership in them, and incorporated other ministries and control agencies of the Colombian state as well as the private sector and the academia. Every procurement project had to pass through this process and could be sent back at any step in the chain. Also, the subsequent tender and contract were regularly controlled as well, until the process of obtaining the new equipment was completed.

- Inside the ministry, managers were designated for each of the different 28 PCSD plans and programs. The managers had to hand in a report stating the advances of their respective areas of responsibilities to the defence minister every three months.
- A general project manager was nominated inside each force—a function to be carried out by a general or admiral rank (in practice, the positions were mostly filled by the respective deputy force commanders). This manager was tasked with centralising the projects and handing the corresponding information to the deputy minister for institutional management.

CASE STUDY: FERROSTAAL LINKS TO COLOMBIA

At the end of March 2010, German prosecutors raided the headquarters of German company Ferrostaal for the second time in an on-going inquiry into alleged corruption in international contracts.

One of the countries mentioned in the encountered documents was Colombia, where Ferrostaal has been a long-time representative of several German companies (in purely financial terms, it would be one of the minor cases in the overall affair being investigated by German prosecutors). The case in question is the Colombian Ministry of Defence's procurement of technical and material support for the construction of a coast guard boat and the purchase of a second one for a total value of EUR 28 million from German company Fassmer. A 3 per cent commission paid by Fassmer to its representative in Colombia—Ferrostaal—was publicly advertised in the integrity pact signed in the procurement process, but Ferrostaal is rumoured to have used part of it (EUR 625.000 to 850.000) for payments to decision-makers in the navy and at the ministry of defence.

Fassmer has rejected the corruption allegations, saying it respected Colombian legislation and ethical standards, and that the contract had been signed directly between itself and the ministry, not between the ministry and Ferrostaal. The ministry has insisted all anti-corruption mechanisms were in place (including the steps described in the paper, as well as the integrity pact) and has contested that bribes were received. The Colombian General Prosecutor's Office and the Court of Auditors have launched investigations and requested all available information from the German prosecutors.

Additionally, Colombian newspaper *El Espectador* revealed corruption allegations in defence procurement cases since the mid-1980s, in which Ferrostaal acted as the intermediary of German ship and submarine building companies HDW in Colombia, which have been under investigation by the Colombian General Prosecutor's Office since 2009. The relevant allegations include the non-provision of technical assistance after the procurement of submarines and ships, and incomplete payment of the fines imposed on Ferrostaal for non-respect of contracts (with the complicity of ministry of defence officials).

- The Planning and Budgeting Office (under the authority of the deputy minister) regularly brought together a technical committee with various civilians and military officials from the forces for a discussion and follow-up on every project.
- An analytic committee (initially entitled Decision Committee), consisting of the deputy minister, the ministry's secretary general, the Coordinator of the Plans and Analysis Group of the Planning Assessment Office (subsequently renamed Budget Analysis Group), the deputy commanders of every force, a Sub-Director from the National Planning Department (*Departamento Nacional de Planeación, DNP*) and the Forecast Director from the Ministry of Finance, met regularly as well. The director of the ministry's Internal Control Office was one of several observers.
- A notable creation was the so-called "Ethics and Transparency Commission" (*Comisión de Ética y Transparencia*), whose membership included some of the most important businessmen and business conglomerates in the country (i.e., the taxpayers the wealth tax was being levied on), business council presidents, university deans, academics and two former defence ministers,² as well as the defence minister and the force commanders. The controller general, the inspector general, and the National Planning Department (DNP) were observers.³

² One of the ex-defence ministers was one of the two ministers mentioned with regard to the defence integrity pacts earlier.

³ Note that the so-called "anti-corruption czar", located within the Colombian presidency, was not involved. Ministry of defence's sources could not name specific reasons for this absence.

- The commission was formulated for four years, and its creation included in the government's National Development Plan 2006-2010,⁴ giving it additional legitimacy. Its tasks were a continuous monitoring of the funds' use, the generation of early-warning, and suggestions for changes if needed. In the initial implementation phase of the funds—particularly during the technical and contract processes—the commission was invited to participate in the project definition processes. Until May of 2009,^{vii} all procurement projects between 2007 and 2010 were presented to the Ethics and Transparency Commission, which met on eight occasions. With a new change of political leadership in the ministry, the committee's work was suspended, but subsequently reinvigorated by the new minister.
- A meeting between the minister of defence, the deputy ministers for institutional management and international affairs, the ministry's secretary general, and the respective force commanders (including police) could then issue the so-called 'Commanders' Accord', which would kick off the tender process.

- Every two months, a follow-up report on procurements was given to the Ethics and Transparency Commission as well as to the Office of the Comptroller General and the Office of the Inspector General (the latter had already been entitled to undertake audits into the ministry's procurement processes)

For the procurement processes, the following points were taken into consideration:

- Wherever possible, government-to-government contracting was given preference. The next preferred procedure was public tender, followed by direct procurement on the basis of several tenders. Direct procurement without tender was only permitted in processes supporting existing standardisation schemes.^{viii}
- To ensure the sustainability of acquired equipment and systems, the operational costs had to be taken into consideration.
- The ministry tried to create legal guarantees for the processes requesting specific concept papers from renowned legal experts.

INDICES DE TRANSPARENCIA NACIONAL (ITN) SCORES OF COLOMBIA'S DEFENCE (0-100)

	ITN 2003	ITN 2004	ITN 2005	ITN 2007-2008
Navy	73,65	77,76	84,19	86,9
Air Force	59,49	83,76	87,51	83,6
Joint Chiefs	64,7	70,97	71,78	78,7

Source: Transparencia por Colombia

⁴ cf. *Plan Nacional de Desarrollo 2006-2010. Estado Comunitario: desarrollo para todos*. National Planning Department (*Departamento Nacional de Planeación*), 2007.

Inside the ministry, a new division was created

Administrative reforms to improve transparency

to provide follow-up for all resources used by the ministry, particularly regarding financial aid stemming from the U.S.-backed “*Plan Colombia*”: the Department for Special Projects . This creation allowed an oversight over all resources and their use for the first time.

A second step in improving transparency and reducing corruption vulnerabilities of the defence sector was the creation of a logistics agency common to all forces (previously, each force had a so-called rotating fund, which was responsible for logistics and soldiers’ social benefits). This allowed for more centralised logistics inside a specialised agency. However, it should be noted that the work of the agency was not publicly accounted for in the time period between 2007 and 2008, which resulted in a downgrading in *Transparencia por Colombia*’s National Transparency Index.

The index rates the country’s public institutions, at national, regional and local levels, according to their transparency efforts. The scores range from 0 to 100, with 100 being the highest level possible; 89.5-100 being low risk, 74.5-89.4, a moderate risk; and 59.5-74.4, a medium risk.

Equally, the hitherto widespread industrial participation provisions of the ministry (which include military industries, but also civilian assets such as hotels) were streamlined into the new defence’s Social and Entrepreneurial Group. This group, in turn, was placed under the responsibility of a newly created, specially designated deputy minister. The group was given an advisory board, consisting of the minister of defence, the forces commanders (including the police), the joint chief, and external experts. There is a leading committee for each of the group’s three clusters

(logistical support, well-being, and security support),

which is composed of members of the advisory board (or their delegates), as well as representatives of the Ministry of Finance and the National Planning Department. Finally, the group has a corporate centre tasked with leading the drafting, harmonisation and implementation of the group’s strategy as well as evaluation of internal management.

A final element is the so-called Active Public Management Model (*Modelo de Gerencia Pública Activa*), which the ministry of defence designed together with the office of the controller general in 2006—pushed by the political will of the ministry’s new leadership—and which has since been implemented by the ministry’s Internal Control Office. Its three basic principles are (i) high quality of public policies, (ii) visible public responsibility, and (iii) result-based management. The policy is credited with initiating change within the ministry’s internal culture and highlighting the values of responsibility and accountability.

TRACKING PROGRESS

It is not possible to track changes in the Colombian defence sector exclusively through the National Transparency Indices (*Indices de Transparencia Nacional, ITN*) of *Transparencia por Colombia*. The ITN is not intended to provide over-time comparison and its respective elaboration mechanisms became more demanding in the 2007-2008 version (previous years had shown a generally positive trend, especially with regards to the ministry of defence, which is responsible for procurement).

KEY ELEMENTS OF REFORM

The implementation of anti-corruption policies in the defence sector in Colombia has rested on several key elements:

- The **importance of political will at the highest level of the ministry of defence** was determinant. Without it, putting the topic on the table would have been extremely difficult, if not impossible.
- The **possible spill-over effects from other public anti-corruption policies in Colombia**: the country has strong institutions at the national level (among the strongest in South America) and every government since the mid-1980s has had a formalised anti-corruption policy of some kind. While this alone was not successful in introducing the anti-corruption topic as such into the ministry of defence's policies, it certainly initiated a longer-term reflection process among politicians and the public at large. It also meant that the ministry of defence's anti-corruption policies were taking place in a larger institutional framework, existing experience and identified 'best practices' in the anti-corruption field, and growing public sensibility and scrutiny. In fact, the defence integrity pact in part responded to the necessity of avoiding a potential controversy around the procurement of combat aircraft.
- Ever since the 1991 Colombian Constitution and the nomination of the first civilian defence minister in the same year, there has been a **progressive shift towards accrued civilian leadership in the ministry of defence**. The post of secretary general in 1997, and the leadership of the Planning Office in 2005 went to civilians for the first time. Also, the National Planning Department has had a Justice and Security Directorate since 1991. All these elements led to the eventual formation of a group of civilian defence experts that could deal with the defence questions in general and the specificities and complexities of military procurement in particular.
- The Colombian Ministry of Defence has a high level of institutionalisation, which means that once the political will for anti-corruption measures prevailed, there were **sufficient administrative capabilities** to effectively implement it.
- Colombia has, again in regional comparison, a remarkably **strong private sector as well as a dynamic and knowledgeable civil society and academia**. The participation in public life of these actors, as citizens and as taxpayers, sends out a strong message in favour of transparency.^{ix}
- Finally, in the author's opinion, the progressive implementation of anti-corruption policies in the Colombian defence sector (although still imperfect) highlights a profound and significant change in the way politicians and state actors see **the issue of legitimacy of the state and its institutions**. The intended "creation of modern armed forces with the highest ethical moral standards and the trust and support of the citizenry"—one of the government's five strategic military between 2007 and 2010—has certainly been tainted and put compromised by recent human rights abuses and corruption allegations. It does, however, clearly reflect the expectation that the armed forces be legitimised through societal perception. In parallel, society itself has growing anti-corruption awareness and expectations *vis-à-vis* the state and withdraws part of its legitimating power if these remain unfulfilled.

Conclusion

In a nutshell, the Colombian experience was built upon a pre-existing knowledge and a strong national and intra-ministerial ownership, aiming at rather sophisticated tools and products.

An element that became apparent in the conduct of this study was the relatively low visibility of the undertaken measures and policies both within the ministry of defence and the wider public sphere, with generally well-informed interviewees not aware of the whole extent of what had been implemented. This is something the ministry will have to strive to improve, in its own self-interest.

Equally, while the creation of the Ethics and Transparency Commission constituted a significant decision, it has been a process tied to the contingent political leadership at the ministry and not institutionally enshrined. This lack of continuum could result in a loss of legitimacy for the process. While a rather political process in itself, it should be included in the institutional mechanisms of the ministry so as to be sustainable. Finally, with relation to the work of the commission (and the lack of visibility mentioned above), it would be useful for the commission's work and decisions to be made public.



While the creation of the Ethics and Transparency Commission constituted a significant decision, it has been a process tied to the contingent political leadership at the Ministry and not institutionally enshrined. This lack of continuum could result in a loss of legitimacy for the process.

ENDNOTES

- i. TI's Colombian chapter also tried to work the so-called Integrity islands (*islas de integridad*) approach – an instrument that tries to isolate organisational processes from corruption risks—but unsuccessfully so.
- ii. cf. 'Preventing Corruption in the Official Arms Trade', *Transparencia por Colombia* and Transparency International UK, March 2006, as well as 'Preventing Corruption in the Official Arms Trade: Experience with implementing a defence integrity pact', Transparency International UK, March 2006.
- iii. December 31st, 2006 exchange rate.
- iv. December 31st, 2006 exchange rate. In fact, the final sum appears to have been slightly higher: the final report of Defence Minister Santos upon leaving his post in May 2009 speaks of an equivalent of USD 3.7 billion (May 31st, 2009 exchange rate, the sum equally rose in national currency terms). '*Consolidación de la Seguridad Democrática: Un esfuerzo con decisión y resultados*', Juan Manuel Santos, *Ministro de Defensa Nacional. Julio 2006 - Mayo 2009*, May, 2009.
- v. In comparison: For the time period between 2002 and 2006, the total investment had been USD 1.8 billion. Total U.S. military assistance—the so-called *Plan Colombia*—for the time period between 2007 and 2010 was USD 1.8 billion. Just the Facts (<http://justf.org/>), Center for International Policy.
- vi. *Política de consolidación de la seguridad democrática: fortalecimiento de las capacidades del sector defensa y seguridad*. Conpes 3640, February 2007.
- vii. *Consolidación de la Seguridad Democrática: Un esfuerzo con decisión y resultados*. Juan Manuel Santos, *Ministro de Defensa Nacional. Julio 2006 - Mayo 2009*, May, 2009.
- viii. Government-to-government contracts represented 43 per cent and direct procurement 41 per cent of the earmarked sum for 2007 (which represents nearly 50 per cent of the total four-year sum). Conpes 3640.
- ix. It could, however, also create the image of a two-class society where only the rich have an insight into and influence on weapons procurement, and create conflicts of interests if the businessmen or acquaintances of them were, in parallel, acting as intermediaries or offset beneficiaries in the procurement process.