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DIRECTORATE OF INTELLIGENCE

7 February 1991

Colombia: Strategy for Judicial Reform

Summary

President Gaviria is pressing a broad strategy aimed at restructuring Colombia's failed justice system and creating effective legal mechanisms to help bring the nation's drug-related violence and corruption under control. The President views judicial reform as an evolving process that will improve the legal system's ability to investigate, prosecute, and convict important drug criminals and compel others to abandon the narcotics business. Although Gaviria already has issued important decrees aimed at streamlining the processing of those accused of drug-related crimes, action by the Constituent Assembly--which over the next six months is charged with crafting changes to the Constitution--will be critical to overall reform of the judiciary. We believe the Assembly will adopt Gaviria's proposals for reform only with significant

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revisions, which may water down their effectiveness and leave the system still vulnerable to legal manipulation by drug criminals. Furthermore, bureaucratic inertia, as well as corruption and incompetence in judicial ranks and continued trafficker intimidation, probably will act as major impediments to implementing judicial reform and effective counternarcotics measures for the foreseeable future. [redacted]

In our view, Gaviria is aware of the difficulties in trying to get his judicial reform package through the Constituent Assembly intact and realizes that even if he succeeds the traffickers will remain a threat to the judicial system for years to come. Nevertheless, he is counting on the lack of a cohesive opposition in the Assembly and his own political skills to help him prevail there and evidently sincerely believes--as indicated in his [redacted] public statements--that a major push for judicial reform is in the country's long-term interests. At the same time, Gaviria--who is determined to halt drug-related violence--probably reasons that his emphasis on judicial reform will provide him with a plausible alternative strategy to the controversial military crackdown of his more hardline predecessor. [redacted]

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Under former President Barco, the linchpin of the government's crackdown on drug trafficking was the exercise of controversial emergency powers, including extradition and other decrees emanating from presidential state of siege authority in effect since 1984. Since his inauguration last August, however, President Gaviria has been shifting Bogota's counternarcotics focus steadily away from extradition and military operations aimed against the top echelon of the Medellin trafficking organizations and towards more effective prosecution by domestic courts. His strategy relies heavily on persuading traffickers voluntarily to surrender and submit themselves to the Colombian judicial system. [redacted]

Last December, a public spokesman for Gaviria said the unprecedented violence associated with the state of siege strategy and its reliance on "repressive military measures" to fight traffickers had been largely counterproductive, because it had forced great sacrifices on public institutions and the civilian population and caused relatively little damage to the drug industry. [redacted] Gaviria wants to eliminate the government's dependency on such extraordinary law enforcement methods in favor of strengthening

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the capabilities of the judicial system to investigate, prosecute, and effectively punish traffickers and other major criminal elements. Concerned about the violence resulting from the counternarcotics crackdown and seemingly convinced that extradition is in jeopardy because of strong nationalist sentiment against it, Gaviria has emphasized that an effective legal system is an essential component of any long-term strategy against the drug industry.

The Judicial System: Weak Link in the War on Drugs

President Gaviria faces a daunting challenge in trying to restructure and reform Colombia's judicial system. The country's legal process is nearly paralyzed by bureaucratic lethargy, incompetence and insufficient resources, and has long been vulnerable to bribery and intimidation by drug traffickers. The public record shows that the judicial system has suffered years of neglect by successive administrations and legislatures alike. Past justice ministers typically have been political appointees not inclined to push through reforms, and judicial budget appropriations have been systematically pared down by legislators uninterested in "wasting" money on a branch of government that offers relatively few patronage opportunities.

Bureaucratically, the judicial system moves slowly, with long pretrial investigations, excessively meticulous legal review, and exhaustive appeals that have caused a backlog of civil and criminal litigation averaging several years per case.

Moreover, the judicial system is poorly staffed and managed. Many judges and court lawyers are ill-trained and inexperienced--often law students who have been unsuccessful in non-governmental careers. Colombia's best legal minds generally seek higher paying jobs in private corporations or in serving affluent clients. Drug kingpins, for example, have their legal affairs managed by the best attorneys and jurists in Colombia.

The bureaucratic and procedural weaknesses of the system lend themselves to manipulation by drug traffickers, whose legal maneuvering routinely has thwarted the judicial process.

traffickers often have been able to avoid having their cases heard by the Public Order courts--created during the Barco administration to handle major drug and terrorism cases--and appear instead before local magistrates more susceptible to bribery and intimidation.^{1/} The

^{1/}See appendix III, organizational chart of Colombia's judicial system. As of 21 January 1991, special tribunals assigned by the Justice Ministry were to assume the antidrug and antiterrorist role of the Public Order courts.

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arbitrary control by individual judges and court officials over the various stages of a case--including determination of its merits and assigning other court personnel and the Judicial Police to investigate charges of criminal wrongdoing--has been exploited by traffickers' attorneys, who typically have succeeded in getting their clients' cases dropped, charges reduced, or sentences suspended. In the past, lawyers have taken advantage of restrictive judicial codes that prohibited plea bargaining and testimony by accomplices in crime and effectively precluded cross-examination of witnesses or courtroom discussion of evidence. Moreover, traffickers often have been able to avoid trial altogether by successfully asserting that confessions or other evidence were obtained illegally by the police. [redacted]

Traffickers regularly resort to bribery, intimidation, and assassination when court procedures or judges appear unyielding to legal maneuvers. [redacted] most of the country's approximately 5,000 judges and 15,000 court officials enjoy life tenure in their jobs, but low pay and lack of prestige and security make them especially vulnerable to subornation, coercion, and other forms of manipulation. Over 200 justice officials have been assassinated by trafficker death squads in recent years, according to numerous press accounts, while hundreds more and their families have been terrorized and threatened with death. Other victims--almost certainly targeted by hit men linked to Medellin traffickers--have included a Minister of Justice, an Attorney General, several Supreme Court magistrates, and at least one presidential candidate. Some judges have succumbed to such pressure by resigning, while others [redacted] have accepted bribes in exchange for dropping charges against drug criminals and for commuting sentences of those who were convicted. When the legal process has moved beyond the control of a specific judge, traffickers have coerced or bribed prison officials and members of the security forces to engineer jailbreaks. [redacted]

The success of Colombia's major kingpins in using a variety of techniques to thwart the judicial system is underscored by the fact that despite several government efforts, no important trafficker has ever been convicted by a Colombian court.

[redacted] lawyers for Cali druglord Gilberto Rodriguez Orejuela gained acquittal for their client four years ago through legal maneuvers that set a precedent for use of a double jeopardy clause in Colombia's extradition law. When Medellin kingpin Jorge Ochoa was arrested in late 1987, representatives of the drug industry persuaded the presiding judge to free him and to initiate criminal investigations that led nowhere. [redacted]

The judge ruled in the Ochoa case that the investigative process constituted a form of trial procedure under Colombian law and that any retrial would constitute double jeopardy, thus effectively precluding extradition on similar charges. Notorious

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Medellin trafficker, Pablo Escobar, thwarted justice on several occasions, [redacted] by murdering judges and police officials who were attempting to investigate his crimes, burning court documents, and probably financing the guerrilla takeover of the Palace of Justice in 1985 that resulted in the deaths of 11 of the 12 Supreme Court judges assigned to study the extradition issue. [redacted]

The Colombian judicial system has undergone several reforms in recent years to improve the quality of judges, streamline the process, and generally elevate the stature and competency of the judiciary. Most notably, Gaviria's two immediate predecessors, Presidents Betancur and Barco, pushed through judicial decrees and laws that led to creation of public order courts to deal with drug and terrorism cases, security measures to enhance protection of judges, and investigatory resources to improve collection of evidence against drug suspects. Nevertheless, these efforts have not markedly strengthened the ability of the judicial system to deal with the trafficker challenge. Consequently, many Colombian political observers and legal experts--mindful of the pervasive systematic obstacles to judicial reform and the willingness of the traffickers to use any means to undermine the court system--are skeptical that additional modifications of the mechanics of the judiciary will bring about a major improvement. [redacted]

Gaviria's Reform Agenda

From his long service in government Gaviria is well aware of the fundamental shortcomings of the judicial system and realizes that it must be streamlined and made less vulnerable to manipulation for his antidrug strategy to have any chance for success. Gaviria also wants to toughen penalties for drug criminals while raising public appreciation for law enforcement and offering material rewards to security personnel and police informants. He already has introduced some interim changes to the justice system in anticipation of judicial reforms he hopes will become law in the Constituent Assembly. He also intends to press for major increases in the 1991 budget for judicial operations. [redacted]

Short-Term Measures

Since his inauguration, Gaviria has initiated several programs aimed at strengthening the justice system's ability to deal with drug traffickers and terrorists. Among these are provisions of a presidential decree issued last November that created five regional jurisdictions for special antiterrorist and antidrug courts, which reportedly are now on line. [redacted] the special courts--employing highly trained and dedicated judges and investigators already experienced in handling cases of violent crime and conspiracy--will try those accused of drug-related crimes in secret, with the identity of

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judges, court personnel, investigators, witnesses, and informants excluded from the public record. Gaviria believes the special courts will complement other measures, such as sequestering drug suspects in new maximum security jails to both guarantee their physical security and prevent their escape. Moreover, [redacted]

Gaviria calculates that by providing bodyguards and armored vehicles for use by court officials and their families he can greatly reduce the threat of traffickers intimidating key judicial personnel. [redacted]

The President also announced a major initiative to induce traffickers to surrender and confess to narcotics crimes in exchange for substantially reduced sentences and a guarantee against extradition to the United States. Gaviria's "plea-bargain" decree--first declared in September 1990 but modified three times since then--allows traffickers to surrender to municipal judges of their choice, but calls for them to be then remanded to criminal "instruction" courts appointed by a federal judge.^{2/} Under the decree, the instruction courts--which function as a kind of grand jury and investigative agency--have one year to issue indictments and collect sufficient evidence to try suspects in the new secret tribunals; during this time, suspects are to be held without bail in special security facilities. Those who confess to drug-related conspiracy, however, and terrorism suspects held on nondrug-related charges may be awarded bail privileges. [redacted]

The surrenders under the terms of the presidential decree of Medellin drug kingpins Fabio and Jorge Ochoa and trafficker-backed paramilitary vigilante Jose Banegas have been hailed publicly by Gaviria as proof that his new judicial strategy is working, and he has publicly suggested that its codification by the Constituent Assembly could revolutionize Colombian laws of criminal procedure. Another major trafficker, however--who surrendered in November under the terms of the plea bargaining decree--was recently given a suspended sentence and released from custody by a presiding judge who almost certainly was coerced by drug interests. [redacted] This setback has caused the government to make an extraordinary public effort to reverse the judge's decision at the appeals level.^{3/} [redacted]

A key element in Gaviria's new strategy to prosecute and convict drug traffickers is its reliance on the US Government to

^{2/}See Appendix I for a description of Gaviria's plea-bargaining decree. [redacted]

^{3/}The judge made his ruling in mid-January, just before the new special court system--designed to minimize such abuses--was put into effect. The government's appeals case rests on a stipulation of the plea bargaining decree that prohibits suspended sentences for those convicted of drug-related crimes. [redacted]

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provide needed evidence to try traffickers in Colombia.

[redacted] Gaviria is considering use of a stipulation of the existing penal code that allows the government to prosecute citizens in Colombia for crimes they commit overseas. An additional available tool is an antidrug enforcement statute passed in 1986 that makes conspiracy a new category of felony offense. [redacted]

Nevertheless, judicial and law enforcement authorities still suffer from a limited capability to develop sufficient hard evidence independent of the criminal confessions called for in the plea-bargaining decree. Colombian officials publicly have stated that foreign-produced evidence will be essential to building cases against traffickers that result in convictions and jail sentences. [redacted]

Long-Term Goals

[redacted] Gaviria fears that pressure by traffickers on both chambers of Congress would defeat any efforts to legislate necessary changes in the judicial system and, therefore, wants such reform mandated by the Constituent Assembly.^{4/} Gaviria is seeking to have organizational changes written into the Constitution that would allow him to reduce the size and enhance the effectiveness of the entrenched judicial bureaucracy. To undercut the traffickers' ability to influence criminal investigation and prosecution through bribery and intimidation, Gaviria wants to transfer direct oversight of these functions--and judicial security--from the courts to the Office of the President. He also is seeking to expand the Attorney General's constitutional mandate to monitor

^{4/}On the one hand, Gaviria likely wants to avoid the time-consuming regulation that requires approval for constitutional changes to be voted on by two consecutive sessions of Congress. He also has expressed concern that his program could suffer a fate similar to that of his predecessor. In December 1989, President Barco was dealt a major political defeat when the Congress--which [redacted] was acting under pressure from traffickers--added a rider to the presidential reform bill ordering a public referendum on extradition. Fearing that such a referendum would be defeated, Barco opted instead to abandon his entire legislative package that had taken two years to negotiate with congressional committees. [redacted]

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official wrongdoing and has requested additional funding and staff for regional prosecutors investigating drug-related corruption in municipalities.^{5/} [redacted]

In an effort to strengthen prosecution cases against traffickers, the President is promoting far-reaching procedural changes as well. [redacted] Gaviria has proposed a constitutional amendment that would facilitate counternarcotics investigations by institutionalizing his special courts and waiving the civil rights of suspected traffickers. In recent public statements, moreover, advisers to Gaviria called for the elimination of the right to presumption of innocence for suspects involved in drug-related cases. Gaviria also wants the Constituent Assembly to codify US-style prosecutorial trial proceedings for drug cases in Colombia, which would depend heavily on the use of confessions and testimony from accomplices and independent witnesses. [redacted]

The Gaviria administration also has proposed creating a special international court to prosecute traffickers, which is consistent with his long-held view that drug trafficking is a crime without borders that needs to be dealt with multilaterally. [redacted] the President believes that Colombians charged by foreign governments with smuggling, money-laundering, murder, and other crimes associated with drug networks might be better handled by an international tribunal. Gaviria's advisers have acknowledged [redacted] that the plan is controversial, fraught with practical bottlenecks, and would take perhaps 15 years to implement. Nevertheless, they argue that internationalizing the juridical side of drug enforcement would relieve some of the financial and political burdens on Colombia and lead to more multilateral intelligence sharing and policy coordination among security officials in drug-producing and consumer countries. [redacted]

Outlook and Implications

Gaviria is staking his counternarcotics strategy and much of the success of his presidency on judicial reform. If he can persuade the Constituent Assembly--over whose agenda he will have no direct control--to adopt his reform proposals, he may succeed in creating a more effective legal system, with established constitutional mechanisms that could safeguard the integrity and

^{5/}The resignation last December of Attorney General Gomez Mendez and several of his top aides followed public criticism by Gaviria and other civilian and military leaders of Gomez's handling of an investigation of Army abuses and negligence during the bloody guerrilla takeover in 1985 of the Palace of Justice. [redacted] the Office of Attorney General is more likely to lose, rather than gain, influence in any constitutional review of its watchdog role in government. [redacted]

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security of the courts sufficiently to crack down on drug trafficking. Improved prospects for conviction and tougher sentences for traffickers would prove Gaviria's point that judicial reform, not militarization or extradition, is the best counternarcotics strategy for Colombia. [redacted]

Since the surrender of the Ochoa brothers, a variety of press commentators and other public figures have argued that, over the longer term, a more effective judicial system might persuade some ranking traffickers to retire altogether from the drug business. These individuals reason that because so many traffickers have acquired such staggering wealth they would be content to retire in peace. We do not rule out the possibility that a significant number of additional traffickers would find such a logic compelling and would be susceptible to government efforts to convince them that while they remain fugitives they have more to fear from police retribution than they do from surrendering to the courts. Although the surrender of substantial numbers of major traffickers could result in a temporary reduction in drug operations in Colombia, we would expect other lesser known traffickers to fill much of the production and marketing void, either in country or elsewhere in the region, as long as demand for illegal drugs in consumer countries remained high. [redacted]

To help the prospects for his reform proposals in the Constituent Assembly, Gaviria is likely to push the courts to expedite the processing of jailed traffickers Fabio and Jorge Ochoa, even though it is unclear how confident he is that traffickers like the Ochoas can be convicted and sentenced to time in jail under his plea-bargain decree. Nonetheless, the President is likely to feel vindicated over his campaign pledge to bring a quick end to drug-related violence should he induce even a few more kingpins to surrender. [redacted]

Bogota's recent breakthrough with the Ochoa brothers suggests that some other major traffickers may attempt to take advantage of the relatively lenient terms of the plea-bargain decree. The threat of extradition is, after all, virtually eliminated under the President's decree and, [redacted] may be abolished altogether by the Assembly. In our view, such kingpins as Pablo Escobar--who have been seeking the same full pardon that the government has afforded leftist insurgents like the M-19--may decide to surrender if they conclude they can beat Gaviria's new system with legal maneuvers, will receive only minimal sentences and complete guarantees of personal security, and will experience relatively little disruption in their trafficking business while they are involved in the legal process.^{6/} [redacted]

^{6/}See Appendix IV for an analysis of the traffickers' perspective regarding judicial reform. [redacted]

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In our view, Gaviria's proposals for judicial reform probably will undergo significant revisions in the Constituent Assembly that could weaken their effectiveness against the drug industry. Although Gaviria is widely recognized for his parliamentary skills--demonstrated most recently by his success in pushing major economic legislation through Congress--his ruling Liberal Party won only about one-third of the Assembly's 70 seats, which will force him to build a majority bloc through compromise with delegates from other interest groups.

the President has been working behind the scenes with leftists and conservatives alike to pave the way for introduction of his reform proposals, but many Assembly delegates are likely to resist wholesale changes of centuries-old norms of jurisprudence, particularly with reforms that are seen as copying the US legal system. Moreover, we believe some opposition delegates--as well as members of Gaviria's own Liberal Party--will be susceptible to log-rolling efforts by pro-trafficker interests. Local opinion polls indicate that a significant number of Assembly delegates probably would sympathize with trafficker demands for further legal concessions if such action meant an end to drug-related violence. Recent press communiques by traffickers that they would renew terrorist violence--a threat that was retracted after the government announced additional favorable terms for surrender under the new plea-bargaining system--may in part have been calculated to influence Assembly delegates toward greater leniency on counternarcotics issues. //

Meanwhile, whatever judicial reforms are approved by the Constituent Assembly, there are likely to be significant practical hurdles to implementing them. Although some aspects of Gaviria's reforms--such as better protection for judicial personnel, special antidrug courts, and expanded law enforcement and investigative resources--essentially repeat efforts by previous administrations, the introduction of plea-bargaining and the transformation of criminal court procedures from inquisitorial to prosecutorial are radical departures from traditional legal practice. We believe, however, that too rapid a shift toward streamlining the courts would impose serious strains on an already vulnerable judicial system.

Apart from the burden of new antinarcotics caseloads on Colombia's weak legal institutions as they undergo an unprecedented shake-up, almost certainly there will be official resistance to change. For example,

//In a reliable opinion poll taken in late 1990, 83 percent of Colombian respondents said they would even accept the appointment of a drug trafficker to the Cabinet if it would facilitate an end to drug-related violence. See Appendix II for a discussion of public attitudes toward judicial reform.

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the powerful left-wing trade union ASONAL, which represents the majority of judges and court personnel, is likely to resist reforms aimed at paring back the bureaucracy or raising personnel and performance standards that might threaten job security. It is also uncertain whether Congress, having been shut out of the Constituent Assembly process, will pass the necessary legislation or appropriate sufficient funding to support Gaviria's new reforms. Furthermore, traffickers are likely to continue using threats or bribery to manipulate the legal system. [REDACTED]

To this end, Gaviria probably calculates the United States will show patient and guarded approval for his shift away from sustained military pressure on the traffickers in favor of the evolving process of judicial reform. He almost certainly will press for more active US support for his initiatives by arguing that a more effective judicial system will convince many traffickers to cease their drug operations, at least inside Colombia. He may also contend--correctly in our view--that greater US financial support for judicial reform would strengthen his ability to improve Colombia's human rights record, while addressing the threat posed by traffickers to democratic institutions, a priority cited frequently by President Bush and other US leaders. Whether or not the Constituent Assembly fundamentally restructures and reforms the justice system, we believe Gaviria is unlikely to shift back to an emphasis on a military solution in his counternarcotics efforts unless the traffickers once again resort to violence against top Colombian leaders. [REDACTED]

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APPENDIX I

GAVIRIA'S PLEA-BARGAINING DECREE

Gaviria's original plea-bargaining measure, Decree 2047, was issued on 5 September 1990 as a means to persuade traffickers to surrender and face Colombian justice. It offered to waive extradition and be lenient in sentencing if traffickers would curtail their violent activities, turn themselves in, and confess to all of their crimes--even those they had not been charged with. In early October, the government modified Decree 2047 by guaranteeing greatly reduced sentences and immunity from extradition if traffickers agreed to confess to at least one crime, and permitted defendants to choose their own trial judges. Decree 3030, issued in mid-December, modified Decree 2047 by clarifying ambiguous language and closing a variety of legal loopholes. Under Decree 3030, the plea-bargaining system works as follows:

- Upon surrendering and confessing to at least one crime, a trafficker is granted immunity from extradition.
- Cases are now to be tried exclusively by special antidrug court judges selected by the government, not by the traffickers.
- Convicted traffickers serve reduced sentences commensurate with the nature of their offense and extent of their cooperation with the government. Traffickers serve sentences for multiple crimes concurrently, not consecutively.
- Surrendered traffickers lose immunity from extradition if they retract confessions, give false testimony, or attempt to escape.

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-- Individuals may be incarcerated up to a year without bail while foreign governments prepare evidence for use by Colombian prosecutors. Only suspects charged with nondrug-related terrorism or conspiracy to commit crimes will be considered eligible for release pending their trials.^{1/} [redacted]

^{1/}On January 29, the government announced yet another decree amending 3030 that extends the deadline for plea-bargaining eligibility on all crimes to the date of an individual's surrender. The original decree--which ruled that the benefits of plea-bargaining would only be available for crimes committed before the cutoff date of 5 September--was changed because Caviria felt further inducements were needed to persuade more traffickers to surrender [redacted]

[redacted] The new decree does stipulate, however, that traffickers trying to thwart justice through manipulation of judges will lose their immunity from extradition [redacted]

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APPENDIX II

Public Support for Judicial Reform

Deliberations over judicial reform in the Constituent Assembly probably will be influenced substantially by the level of public support for Gaviria's proposed overhaul of the justice system. Although opinion polls indicate he still has considerable room to maneuver politically, the public's reaction to Gaviria's reform proposals has been mixed, owing in part to Colombian news accounts that discredit US-style justice, on which many of Gaviria's reforms are modeled. The Colombian media in recent months have focused considerable attention on the perceived leniency shown by the US judicial system in the Mayor Barry case, alleged mistreatment of extradited Colombians in US jails, and what they have called discrimination by US immigration and customs agencies against Colombian travelers. Public opinion polls indicate that Colombians are wary of US concepts of law in general and remain especially skeptical about such practices as plea-bargaining.

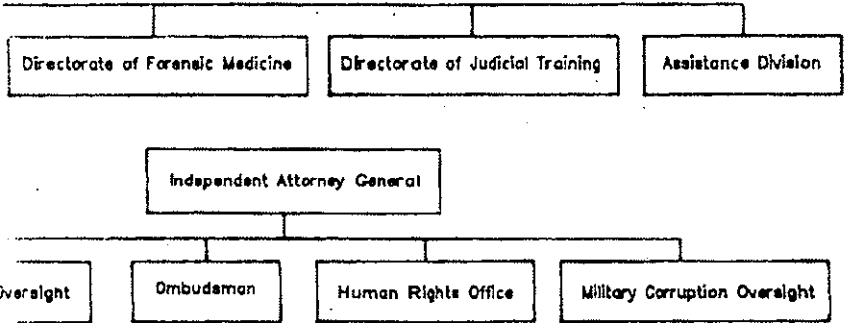
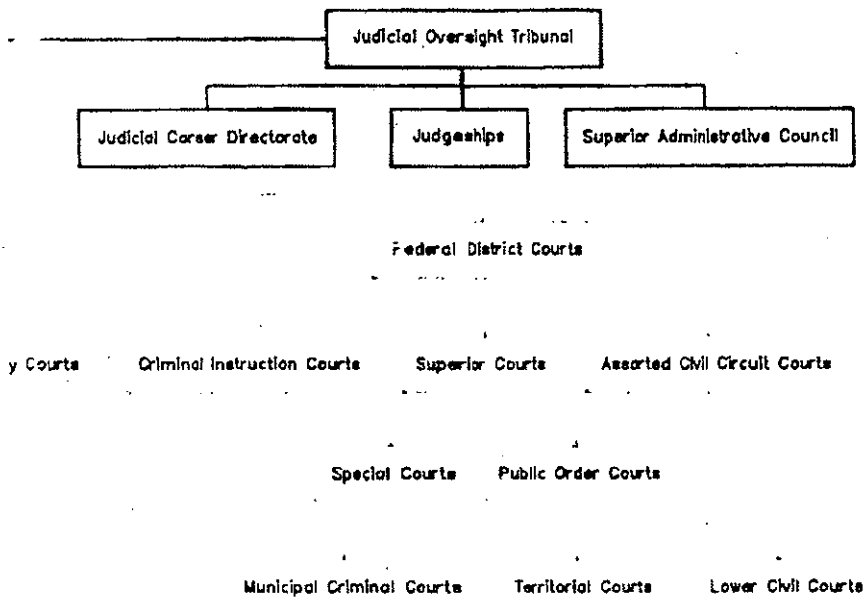
Furthermore, Colombians remain ambivalent about the nature of the threat posed by the drug industry.

a broad cross-section of Colombian society views drug trafficking largely as an international contraband activity that should be dealt with by conventional--rather than extraordinary--law enforcement measures, and without undue pressure from the United States. Public opinion polling continues to show that many Colombians are sympathetic to trafficker propaganda that justifies narcoterrorism as a backlash against Bogota's use of extradition, expropriation of assets, and other extra-judicial persecution of local "businessmen" and their families. In our view, new judicial codes that differentiate between non-violent and violent drug criminals and between political terrorists and narcoterrorists--distinctions Gaviria is using to undercut trafficker demands for peace talks and pardons such as those offered by his administration to Marxist guerrillas--run the risk of further reducing public concern over the trafficking issue if the level of drug-related violence continues to subside.

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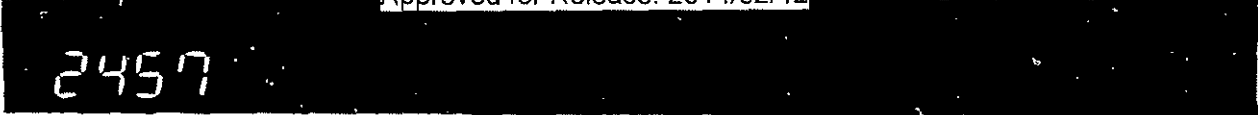
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Colombian Judicial System



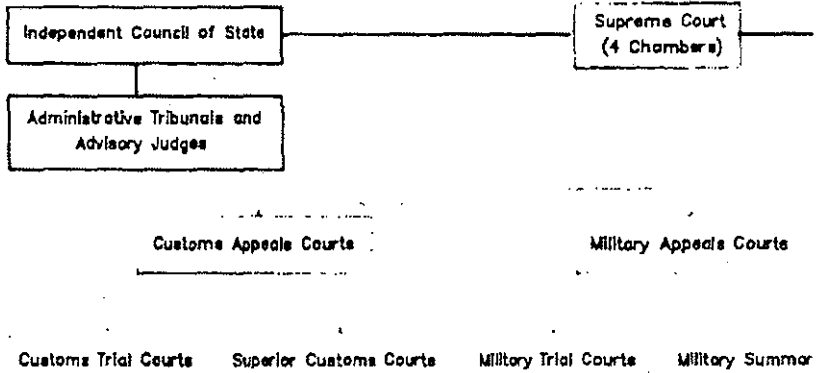
Principles of Justice

In an array of checks and balances with hierarchical chains of appeal to safeguard the interests of citizens in the US, Colombia's legal principles are grounded in ancient Roman Law and 19th century civil law. Judges examine written accusations and testimony, issue a verdict and pass sentence. Criminal courts are assigned a broad range of criminal cases, and act initially as their own grand jury. When an appeal is filed, the court tries the case, sometimes using a three-man jury for capital crimes. In the case of a guilty verdict, the sentence is administered by the Justice Ministry.

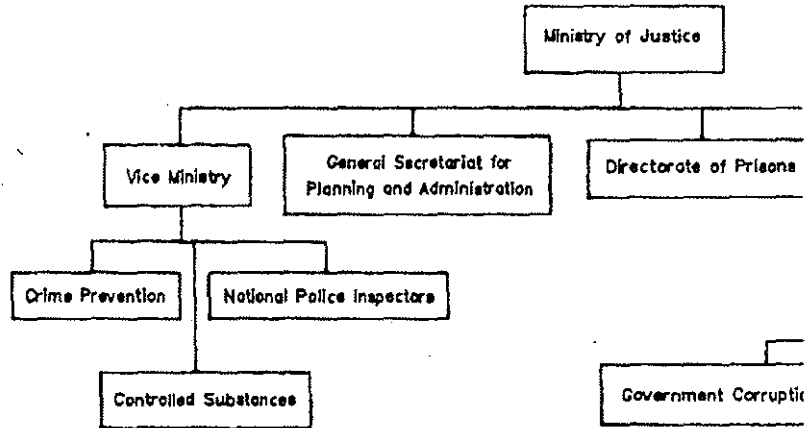


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APPENDIX III:



Customs Trial Courts Superior Customs Courts Military Trial Courts Military Summary Courts

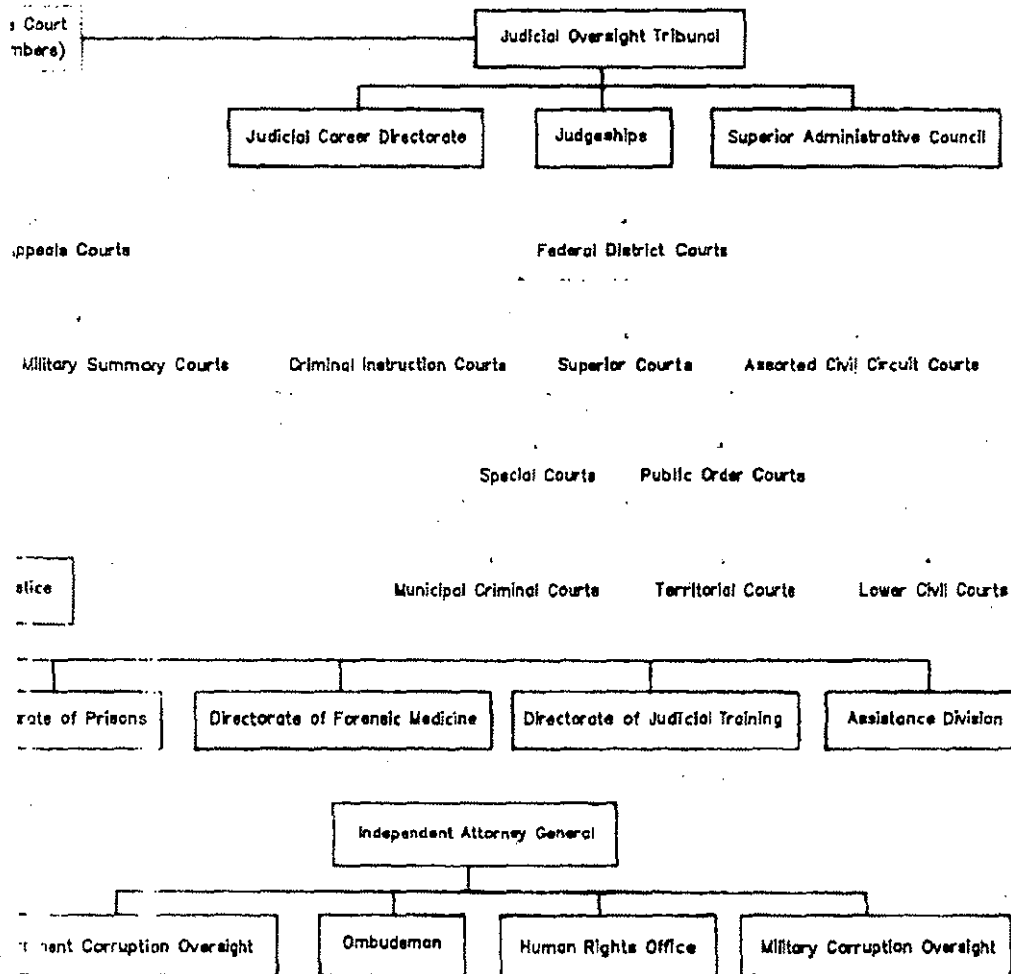


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Most legal observers believe that, in theory, Colombia's judicial system adequately combines of justice and the democratic process. Unlike the "Common Law" model of justice that ex Napoleonic Codes. Essentially, the system is inquisitorial rather than prosecutorial; individu According to the public record, court officials presiding over the "instruction" phase are as investigation is completed, the appropriate trial court—special, superior, or public order— finding, the trial judge passes sentence and remands the defendant to the prison system.

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Principles of Justice

Colombia combines an array of checks and balances with hierarchical chains of appeal to safeguard the interests of justice that exists in the US. Colombia's legal principles are grounded in ancient Roman Law and 19th century civil law; individual judges examine written accusations and testimony, issue a verdict and pass sentence. In the first phase are assigned a broad range of criminal cases, and act initially as their own grand jury. When an appeal is filed, the judge tries the case, sometimes using a three-man jury for capital crimes. In the case of a guilty verdict, the sentence is administered by the Justice Ministry.

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APPENDIX IV

Trafficker Perspectives on Judicial Reform

We believe the recent surrenders of Medellin-based drug lords and press communiques from Pablo Escobar suggesting that he might follow suit reflect a calculated assessment by traffickers that they run a very low risk of lengthy incarceration if they turn themselves in. The traffickers' unilateral cease-fire last August followed months of public statements by Gaviria before he took office that he favored "demilitarizing" the drug war and ending drug-related violence by the end of 1990. It probably was designed to encourage the new President to push ahead with legal concessions, such as those contained in his plea-bargaining decree, and to curtail the harsh antidrug crackdown. According to press accounts, Medellin kingpin Fabio Ochoa--the first of the major traffickers to surrender--acknowledged that a major reason for his decision was weariness from being constantly on the run from the security forces and fear that the police were determined to kill him. In our view, the drug kingpins' past experience--including the fact that no important trafficker has ever been convicted in Colombia--has strengthened their confidence in dealing with the judicial system. [redacted]

Some traffickers probably assume--correctly in our view--that they can outflank judicial reforms aimed at insulating judges and security officers from bribery and intimidation. They probably also anticipate that the weak court system will be unable to gather sufficient evidence--despite plea-bargaining rules and information sharing with the US Government--to secure convictions resulting in lengthy jail sentences for traffickers. Moreover, past experience probably has convinced them that if the government fails to convict those who surrender of major crimes, Colombian legal codes regarding double jeopardy will help ensure that similar charges are not brought against them in the future. By appearing to cooperate with the judicial process, some of the most notorious traffickers may believe they can minimize the threat of government retribution against themselves and their families, while still enjoying the material benefits of their illicit trade. [redacted]

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