

The discrepancy between efficacy and legality: An examination of investigative obstacles in Colombian crimes against public administration

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In Colombia, administrative corruption is a systemic challenge that undermines institutional legitimacy. This article examines the effectiveness of the legal system in combating internal corruption. Using a legal-social paradigm and a hermeneutic approach, an ex post facto design with a quantitative focus was used to analyze Rama Judicial management indicators from 2010 to 2021. The results show a typical "bottleneck" during the investigation phase, with high archival rates in crimes like prevaricato (45.7%) and illicit enrichment. It is found that there is still a substantial discrepancy between legality and actual efficacy even in the presence of a strong regulatory framework. Technical impunity, stemming from investigative weaknesses and procedural barriers, erodes the rule of law, making it imperative to adopt technological tools to ensure traceability and effective justice

INTRODUCTION

Corruption is a silent malaise that erodes the core of public administration globally. This phenomenon undermines the legitimacy of governmental processes and distorts equity in policy implementation. According to the UN (2024), the lack of transparency hinders efficient institutional functioning, which negatively impacts economic development.

The analysis of corruption in Latin America necessitates a multidisciplinary approach due to its systemic nature and its devastating effects on economic and political stability. According to Estévez (2005), this phenomenon must be addressed from political, economic, and social spheres, considering structural factors such as the concentration of power, inequality, and the erosion of ethical values. Furthermore, Villoria (2019) emphasizes the need for measurement methodologies that converge objective data with perception, warning that the interaction between cultural and institutional causes can

result in systemic corruption.

From a legal perspective, the concept is associated with bribery and the attainment of illegal advantages (Diccionario Panhispánico del Español Jurídico). However, the UNODC (2022) expands this view by introducing the notions of "decomposition" and "decay," suggesting a transition from original purity toward a degradation of social structures and values. This vision of moral deviation finds resonance in ancient philosophy; while for Plato corruption represents a lack of harmony wherein unrestrained desires violate justice, Aristotle highlights the rupture of the moral equilibrium necessary for social well-being (González, 2014; Mesquita, 2016). These metaphors of decadence and impunity have also been analyzed through Stoic and Epicurean currents (Ortiz, 2017; Braicovich, 2019).

In Colombia, the crisis is undeniable, evidenced by scandals that undermine public trust. Despite legislative efforts, a significant gap persists between regulations and their practical application. This article seeks to identify the knowledge gap regarding the actual operability of judicial sanctions against crimes involving public administration, setting as its primary objective the analysis of the judicial system's effectiveness in combating its own internal corruption.

The analysis of corruption requires an understanding of its multidimensional nature. Estévez (2005) notes that it must encompass political, economic, and social spheres. From ancient philosophy, Plato interpreted corruption as a lack of harmony in the soul, where unrestrained desires corrupt justice. Contemporaneously, the UNODC (2022) associates the term with the "decomposition" and "decay" of values and social structures.

The study of corruption in Colombia is currently defined as a critical multidisciplinary field for strengthening the Social Rule of Law (Kahn & Saavedra, 2021). Recent literature is not limited solely to diagnosis but delves into the complexity of its measurement and its transversal effects on Colombian society.

The characterization of corruption faces significant methodological challenges. Ayala et al. (2022) confirm a notable increase in the phenomenon between 2010 and 2016, warning that corruption focal points vary depending on the indicator used (disciplinary or fiscal). This reveals a heterogeneous and occasionally contradictory statistical record among various oversight entities.

From a socioeconomic standpoint, corruption generates gaps that render public administration dysfunctional, limiting its capacity to resolve social issues (Mercado, 2021). This inefficiency translates into a delegitimization of the system, fueled by public perception. In this regard, Henao and Espinosa (2018) suggest that this perception does not depend solely on factual events but also on media coverage and daily discourse, creating an asymmetry in how citizens process institutional information. The crisis of legitimacy is supported by international indicators. By 2016, Colombia received a deficient score of 37/100 on Transparency International's Corruption Perceptions Index (CPI) (Newman & Ángel, 2017). Likewise, links have been explored between these corruption indices and the country's structural poverty, analyzing documented cases between 2010 and 2018 (Morales et al., 2018).

Despite the existence of legal mechanisms, legislation alone has proven insufficient (Fernández, 2017). There is an expressed need to transition from purely coercive measures toward the development of a culture of legality and the implementation of structural reforms. In this sense, focusing on the Judiciary and oversight bodies is identified as the most critical line of action to break the cycle of impunity and restore systemic legitimacy (Kahn & Saavedra, 2021).

MATERIALS AND METHODS

The research is grounded in a socio-legal paradigm utilizing a hermeneutic method, aimed at understanding the practical application of regulations within the Colombian context. According to Hurtado (2012), the research design is defined as *ex post facto*, given that the analysis focuses on causal processes that have already occurred, thereby precluding the researcher's manipulation of variables.

A quantitative approach was implemented, based on the analysis of management indicators and empirical results from the Judiciary. The primary axes of study are the Rate of Final Convictions and the Amount of Recovered Assets. The latter indicator is critical, as it allows for the measurement of the economic impact of the anti-corruption struggle and the State's effectiveness in providing restitution for patrimonial damage through asset forfeiture (*extinción de dominio*). Additionally, the study incorporates the perceptions of citizens and judicial officials. This component seeks to delve into the causes of institutional distrust and the erosion of systemic legitimacy.

Finally, the study employs data triangulation (procedural statistics, asset recovery, and perceptions) to validate the robustness of the conclusions regarding the judicial system's efficacy in addressing this phenomenon.

The strategy for the processing and presentation of results is based on a technical combination of graphical and tabular tools, ensuring the study's statistical clarity and precision.

The distribution of variables and comparisons between the various analyzed groups will be represented visually through bar charts, which will be supplemented by frequency tables detailing the distribution of values and their respective percentage weights. Furthermore, the descriptive synthesis of the information will be consolidated into summary tables integrating measures of central tendency, such as the mean. This approach facilitates a rigorous interpretation of the pertinent statistics for each variable while ensuring transparency in the presentation of the findings.

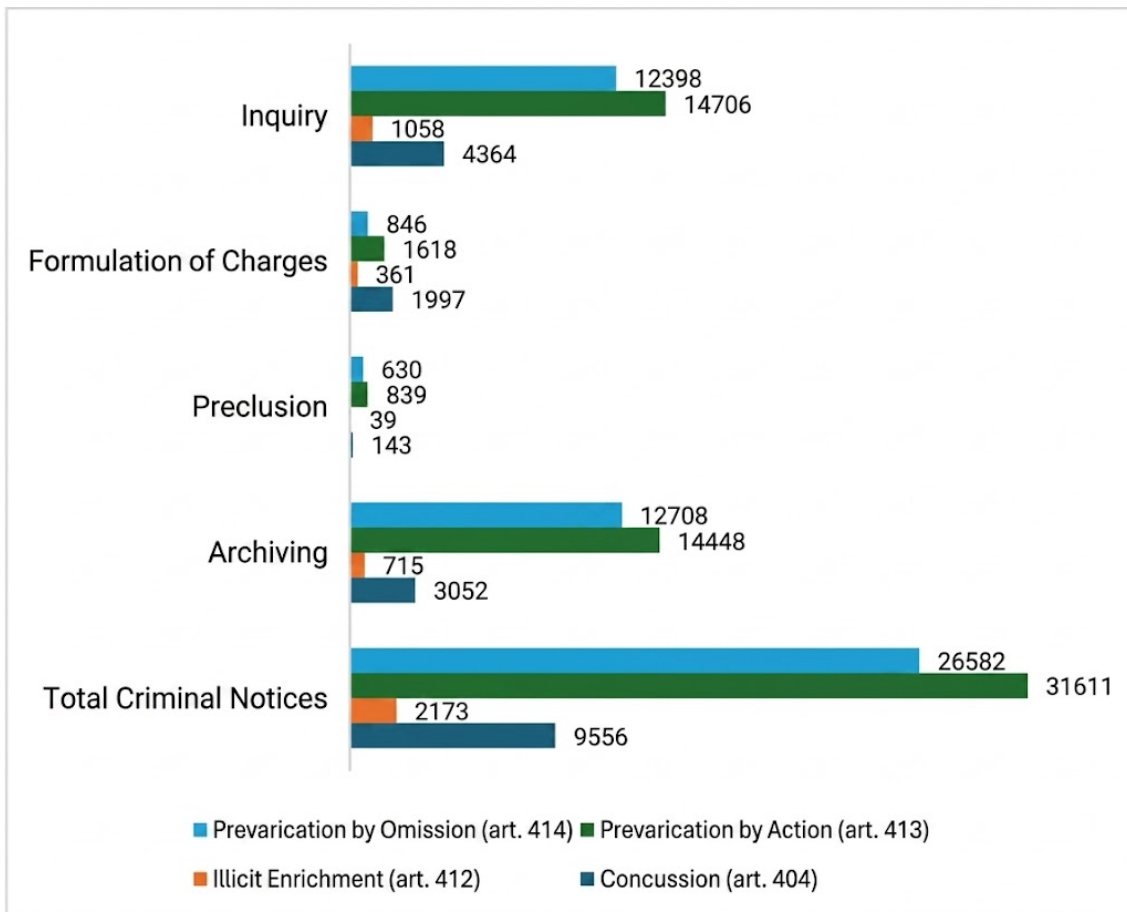
RESULTS Y DISCUSSION

The findings demonstrate that the Colombian justice system faces a "bottleneck" during the initial stages of investigation.

Procedural Actions (2010-2021)

In terms of judicial operability, procedural data from the 2010-2021 period reveal a critical "bottleneck" in the initial investigative stages. The effectiveness of the system is alarmingly low regarding crimes of high technical complexity, as reflected in the following procedural distribution table:

Figure 1 *Procedural actions (2010-2021)*



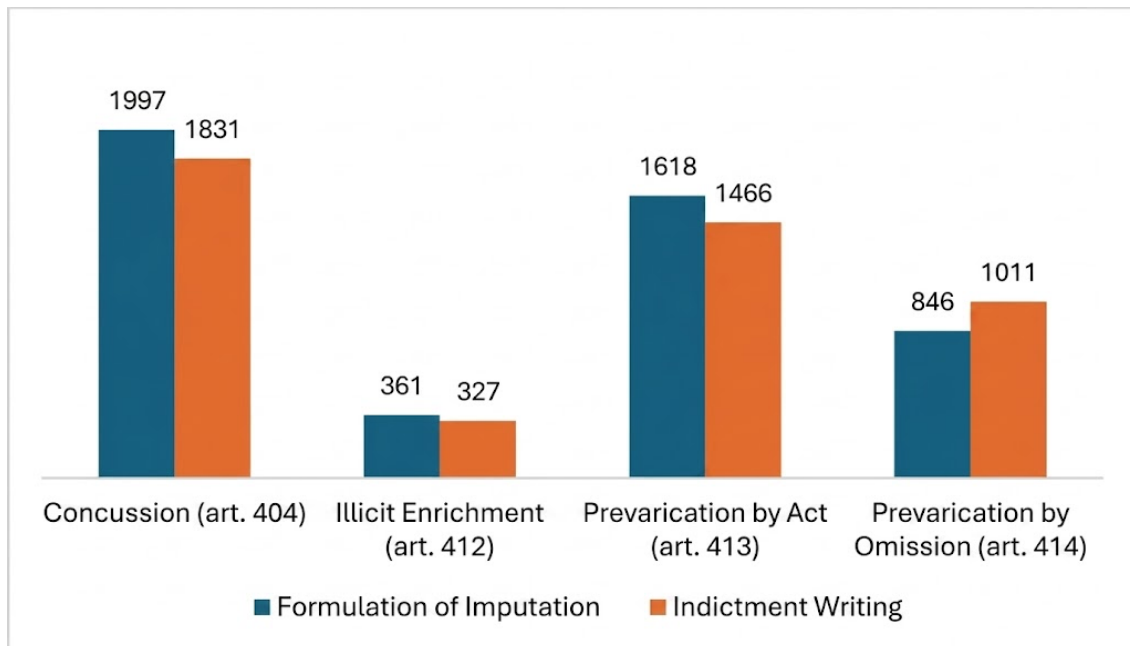
Note 1 Prepared based on: *Anexos Nadar en mar abierto*, by the Secretariat of Transparency 2023
https://transparenciacolombia.org.co/wp-content/uploads/2024/02/Anexos_Nadar_en_mar_abierto_VD060224-1.pdf

Based on the graph, it can be determined that the system exhibits an alarming trend toward the shelving of cases:

Presents the highest rate of criminal reports (31,611), yet with a 45.7% shelving rate. Only 5.1% of cases reach the formal filing of charges. Although it shows high effectiveness at the indictment stage (91.7% once charges are filed), one-third of the initial cases are shelved (31.9%). 48.7% of cases stall during the preliminary inquiry, reflecting the technical difficulty of proving the illegal origin of assets. This disparity demonstrates that while crimes such as concussion achieve high conviction levels once the filing of charges is surpassed, criminal types such as illicit enrichment and prevarication suffer from chronic stagnation. The difficulty in proving the illegal origin of assets and the system's resistance to judicial self-purification create a scenario of technical impunity.

Indictments and filing of charges by type of crime (2010-2021)

Figure 2 *Indictments and filing of charges by type of crime*



Note 2 Prepared based on: Anexos Nadar en mar abierto, by the Secretariat of Transparency 2023 https://transparenciacolombia.org.co/wp-content/uploads/2024/02/Anexos_Nadar_en_mar_abierto_VD060224-1.pdf

The analysis of procedural data reveals that the Colombian judicial system exhibits notably high efficacy once corruption cases successfully pass the initial inquiry phase. Crimes such as concussion, illicit enrichment, and prevarication by action record indictment rates exceeding 90%, demonstrating that, following the filing of charges, the Attorney General's Office (Fiscalía) manages to consolidate robust cases with a high probability of proceeding to trial. Atypically, prevarication by omission stands out with a rate of 119.5%, a figure suggesting technical complexity in procedural recording where multiple indictments may derive from a single formal charge.

Nonetheless, this efficiency in the indictment stage contrasts drastically with a critical "bottleneck" located in the preceding investigative phase. The system's primary weakness does not lie in a lack of success in the courtroom, but rather in the structural difficulty of collecting financial evidence or proving an official's intent (*dolo*) during the initial inquiry. This stagnation, reflected in high shelving rates and a low rate of formal charges relative to the total number of complaints, limits the State's punitive capacity and reinforces the perception of impunity, rendering the investigation phase the greatest obstacle to the integrity of the judicial system.

According to the report by Transparency for Colombia (2024), the "Radiography of Corruption 2016-2022" reveals a critical outlook regarding the economic and social impact of this phenomenon in the country. During this six-year period, it is estimated that approximately \$137.65 trillion pesos were compromised in irregularities associated with contracts and public works. Of this figure, \$21.28 trillion were permanently lost to corrupt actors, of which authorities have only managed to recover \$9.08 trillion through sanctions and fines.

Beyond the patrimonial damage, corruption has directly affected the quality of life of 14.53 million Colombians. The population group most vulnerable to these practices is children and adolescents, who represent 24.65% of the total affected, evidencing how the diversion of public resources weakens essential services such as health and education for future generations.

The anti-corruption struggle in Colombia faces a fundamental contradiction: the coexistence of a robust regulatory framework with systemic inefficacy in its actual

application. This phenomenon, described as the gap between the "law in the books" and the "law in action," constitutes one of the greatest obstacles to development and democracy (Kahn & Saavedra, 2021). The problem lies not only in the absence of convictions but in procedural barriers and investigative weaknesses that prevent the effective prosecution of public officials.

Corruption is defined as fraudulent behavior to obtain illegal advantages, but authors such as Villoria (2019) and the UNODC (2022) expand this view toward a "decomposition" of social values and structures. For his part, Estévez (2005) identifies structural factors such as the concentration of power and inequality as facilitators of its persistence. In the legal sphere, this manifests critically as judicial corruption, where the alteration of decisions in exchange for benefits—especially through the crime of Prevarication—compromises the impartiality of the system.

The inefficacy in sanctioning internal corruption within the Judiciary weakens the principle of the Rule of Law. If the guarantors of the law cannot self-regulate, equality before the law and judicial independence are eroded. This operational weakness is confirmed by research showing that, despite the adoption of multiple legal mechanisms, corruption levels remain high (Fernández, 2017).

Colombia's stagnation is evident in international indicators. The 2024 Corruption Perceptions Index (CPI) grants the country a score of 39/100, placing it in 92nd position globally and far from OECD standards. Previous studies had already warned of a significant increase in cases between 2010 and 2016 (Ayala et al., 2022). Although data may vary depending on the indicator used (Henao & Espinosa, 2018), the trend confirms a persistence of the phenomenon that demands comprehensive strategies beyond simple legal reforms (Newman & Ángel, 2017).

CONCLUSIONS

Contemporary corruption is a complex phenomenon that necessitates the joint examination of law and social sciences. This issue reaches its most critical point within the judicial sphere through prevarication, understood as a judge's intentional malpractice to secure personal benefits. Such conduct not only compromises impartiality but also directly undermines the legitimacy of the legal system and the foundations of the Rule of Law.

Judicial corruption in Colombia is a growing pathology that requires more than superficial legislative reforms. The system's inefficiency in transforming complaints into effective criminal proceedings—particularly regarding prevarication—generates a perception of negotiated impunity. It is imperative to strengthen investigative capacity and adopt technological tools that ensure procedural traceability to restore the Rule of Law.

The legal framework is characterized by a multilateral approach, integrating the Political Constitution (principles of independence and autonomy), the Penal Code (offenses such as prevarication, concussion, and bribery), and the Anti-Corruption Statute (Law 1474 of 2011). Furthermore, there are robust external control mechanisms exercised by the Office of the Inspector General (Procuraduría), the Office of the Comptroller General (Contraloría), and the National Commission of Judicial Discipline.

A dialectical tension exists regarding perception: while actors within the system view internal regulations as sufficient, citizens and experts maintain Colombia in a state of stagnation, with a score of only 39 out of 100 on the Corruption Perceptions Index. Both groups concur on the low prestige derived from the pressure of organized crime and the physical intimidation of judges.

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