

Legislating for Equality in Colombia: Constitutional Jurisprudence, *Tutelas*, and Social Reform

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Colombia receives little in the way of positive international reporting. The country's international reputation is dominated by conflict, cocaine and coffee. Yet, as one would expect from a country of more than 44 million people,² there is a great deal more to the nation than is immediately apparent. Colombia is home to a progressive constitutional system, the product of a relatively recent constitution and a rights-focussed constitutional court. The existence of these legal and institutional mechanisms alongside widespread poverty and social dislocation, places Colombia in a unique position with regards to the legal treatment of discrimination.

Central among the legal mechanisms for the protection of equality in Colombia is the *tutela*: an easily-accessible and quickly-resolved writ for the satisfaction of fundamental rights. As such, it has become a popular mechanism for ordinary Colombian citizens to claim their constitutionally protected rights, and one particularly apposite in a country where poverty would otherwise limit access to justice.

Nevertheless, the operation of the Colombian constitutional system, including the *tutela*, must be examined with a critical eye. In a context where the sources of inequality and discrimination are often structural, the law should not be invoked as a panacea. Rather, a socio-legal approach is warranted, in which the success of the legal system is measured

by its tangible effects throughout the nation. Even given this more cautious approach, there is much to be praised in the Colombian constitutional system, and the protection it has provided to ordinary citizens. However, it is also important to remain conscious of the limits of the law, and the enduring responsibility of government and civil society for social reform.

A Brief History of Colombia

Colombian history is long and eventful, and central to understanding the seeds of modern conflict.³ Independence in the region was first secured by Simon Bolívar in 1819, but the 'Gran Colombia' he created soon destabilised, forming over time the modern nations of Colombia, Venezuela, Ecuador and Panama. As this process occurred, conflicts between Bolívar's followers and those of Francisco de Paula Santander, his deputy, ultimately crystallised into two dominant, competing parties that dominate Colombia to the present: the Liberals and the Conservatives.

The competition of the Liberal and Conservative parties over the 19th and early 20th centuries often resulted in violence. The modern, defining instantiation of this antagonism came in the form of La Violencia. Sparked by the April 1948 assassination of Jorge Eliécer Gaitán, a charismatic and populist leftist leader, La Violencia lasted until

1958, and claimed up to 300,000 lives. While the joint 'National Front' government established by the Liberals and the Conservatives ceased the immediate violence, it prolonged the hegemony of the major parties and traditional powers, and ultimately gave birth to the modern guerrilla movement which continues to plague Colombia.⁴

The failure of the National Front to address widespread inequalities, alongside dubious election practices, encouraged the formation of a number of left-wing guerrilla movements. The most notable among these were the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN) and the April 19 Movement (M-19). To date, only the M-19 has fully disbanded, with the FARC and ELN still active in Colombia, despite a series of attempts at peace negotiations.⁵ The ideological character of these movements is disputed, but it is clear that the rise of narco-trafficking has not passed them by. After the fall of the Medellin and Cali cartels in the 1980s and 1990s, with which the guerrillas had had an uneven relationship at best, the guerrillas took a greater role in the production of cocaine.⁶ The money thus obtained was directed into further funding the struggle against the government. The violent paramilitaries who rose up to resist the guerrillas soon became equally ensnared in the web of cocaine money, and as these groups are demobilising, it appears that new armed groups are rising to take their place.⁷

Modern Colombia is a product of these historical influences, and the currents of political and social conflict run deep. The government of Álvaro Uribe has found itself repeatedly plagued by accusations that its supporters are responsible for collaboration with paramilitaries.⁸ Humanitarian negotiations such as prisoner exchanges continue to proceed shakily, and the enduring violence has produced

record numbers of internally displaced persons.⁹ The direct victims of the violence from both sides are extensive, but the conflict also has more insidious discriminatory effects, as valuable internal and external resources are often diverted to the conflict.¹⁰

A Survey of Discrimination in Colombia

There are a number of particularly vulnerable groups in Colombia, who are the subject of disadvantageous social conditions. At a particular disadvantage are Afro-Colombians who, depending on the measure, could account for as much as a quarter of the Colombian population.¹¹ Large sections of the Afro-descendent population remain in geographically isolated communities, such as Chocó, on the western seaboard, and on the Caribbean coast. These regions are some of the poorest; characterised by extreme poverty, and a lack of access to services such as health and education.¹² One government estimate places 72% of Afro-Colombians in the two lowest socio-economic strata.¹³ By virtue of the location of their communities, they are also disproportionately affected by the conflict,¹⁴ making up 30% of the displaced population.¹⁵ Moreover, they lack significant political representation, with only nine Afro-Colombian members of the 268 member congress.¹⁶ As a result of these pressures, among others, the Afro-Colombian community is in danger of losing its unique culture.¹⁷

The other major ethnic groups to suffer long-term discrimination are indigenous. Despite accounting for less than 2% of the total population,¹⁸ Colombian indigenous peoples display extraordinary diversity. There are more than 90 distinct groups and 64 languages.¹⁹ Yet only rarely are these groups consulted on the exploitation of traditional land, and they generally suffer high levels of poverty, as well as poor health and a lack of education servic-

es.²⁰ They have also been disproportionate victims of the internal conflict, as their traditional lands are often militarily occupied or the subject of fighting.²¹ The history and culture preserved by these groups continue to be threatened.²² Of the 90 indigenous peoples, 39 number fewer than 1,000 individuals, and 28 fewer than 500.²³

The rights of lesbian, gay, bisexual and transgendered persons have also been the subject of significant controversy in recent times. While still at their height, the right-wing paramilitaries engaged in widespread 'cleansing' of undesirable people, including homosexuals.²⁴ Lesbians, gays, bisexuals and transgender persons continue to be the victims of murders, assaults and threats by the public at large and by the police and security forces.²⁵

Women too suffer particular disadvantage in the Colombian context. They are special victims of the conflict, as victims of sexual violence,²⁶ as heads of households, and as the internally displaced.²⁷ In addition, a hyper-masculine 'machismo' (a macho sexism) affects everyday Colombian culture, leading to serious problems of violence against women.²⁸ By one measure, domestic violence and its corollaries are the primary cause of death in women between 15 and 44 years of age.²⁹

The situation of these particular groups must be understood in the context of general poverty in Colombian society. Nearly half of Colombians live below the poverty line, and nearly 15% in conditions of extreme poverty.³⁰ Colombia is marked by some of the highest income inequality in Latin America.³¹ Poverty is most pronounced in rural areas and in particular regions.³² Inequality, therefore, must be accepted as pervasive in Colombia and not merely the province of particular groups.

The State of the Law

A new constitution was promulgated in Colombia in 1991, bringing with it an entirely new constitutional system to address discrimination and inequality. At the heart of that document was a series of fundamental rights, including a guarantee of equality found in Article 13:

"All persons are born free and equal before the law, and shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy."³³

Two subsequent paragraphs in Article 13 provide for the adoption of measures in favour of disadvantaged groups, in the context of a 'real', effective and material equality, and the protection of those in a situation of manifest weakness because of their economic, physical or mental state. Article 13 is framed broadly – it incorporates a negative injunction, found in the prohibition of discrimination, alongside a positive imperative, in the requirement that authorities provide for equal treatment.³⁴ As such, it envisages both formal and substantive equality protections.

There are a number of more specific, complementary protections which feature in the constitution. For example, Article 43 prohibits discrimination between men and women; Article 45 provides protections for adolescents; and Article 68 provides for respect for the identity of indigenous communities.³⁵ As in most constitutional systems, the true scope of these rights is only revealed through their judicial interpretation. Of particular note in this regard is the fact that the Colombian constitution expressly provides that the

rights within it shall be interpreted in accordance with international human rights treaties ratified by Colombia.³⁶ As a result, international instruments have constitutional status within the judicial system.³⁷

The Colombian Constitutional Court has adopted broad understandings of these constitutional rights. For example, the right to the free development of personality has been extended to cover sexual orientation, despite significant social antagonism towards homosexuals.³⁸ Moreover, these rights are analysed in accordance with a proportionality approach. Discrimination between persons may be acceptable, on the Constitutional Court's reasoning, only where it meets a set of criteria:

- the persons are in distinct factual circumstances;
- their distinct treatment has a purpose (*finalidad*) which is constitutionally admissible (that is, 'reasonable');
- the factual matrix, including the differential treatment and its ends, is rationally coherent; and
- the differential treatment is proportionate given the ends pursued.³⁹

These specific criteria incorporate the two overarching criteria of 'reasonableness' and 'rationality'.⁴⁰ The former relates to the legitimacy of the goal, viewed externally: can it be said to be pursuing a legally acceptable goal? In this case, for example, discrimination with the express purpose of distinguishing between men and women may lack the threshold legitimacy to satisfy the 'reasonableness' criteria. The latter criterion, rationality, relates to internal coherence: to what extent are the means and the ends rationally connected? For example, if the legitimate goal of some legislation is to advance the cause of indigenous people, but it has the opposite effect, it will fail the rationality criteria. This

second criterion is particularly important in preventing discrimination with concealed intent, or unforeseen consequences.

The Colombian Constitutional Court has also borrowed the concept of 'strict scrutiny' from United States jurisprudence.⁴¹ This more demanding test of validity is invoked where the discrimination is based on suspicious criteria,⁴² where the discrimination principally affects those in a situation of manifest weakness, when the enjoyment of a fundamental right is affected, or where a privilege is created.⁴³ In these cases, the measure must be necessary and intrinsically proportionate.⁴⁴ These conditions result in much stricter tests of rationality and reasonableness, respectively.

In this system, the application of the prohibition on discrimination between individuals has been limited. The court has justified this on the basis of the combined importance of pluralism and autonomy.⁴⁵ So long as individuals maintain the right to develop their personality in an autonomous fashion, they must maintain the capacity to make personal distinctions on grounds that might otherwise be prohibited, such as political orientation. However, this approach is balanced by situations in which the court has provided anti-discrimination protections against the exercise of private power, for example in the workplace, or by private actors exercising public functions.⁴⁶

Mechanisms for Legal Protection

Issues of access to justice occupy the crucial space between individuals and the Constitution. Therefore, in addition to considering the interpretation of constitutional anti-discrimination measures in Colombia, it is necessary to examine the means available to protect constitutional rights. First among

these, both in popularity and in significance, is the *tutela* action.

The *tutela* action and its analogues can be found throughout Latin America.⁴⁷ It was first established under the name of *amparo* in Mexico in 1857, and has since spread throughout Latin America and beyond. However, it remains a relatively unfamiliar concept within the common law system and much of Europe. The Colombian *tutela* was established in the 1991 Constitution as an action to provide for the 'immediate protection of one's fundamental constitutional rights, when any of these are violated or threatened by the action or omission of any public authority'.⁴⁸ The procedure to invoke a *tutela* is simple: an individual may complain, without the aid of a lawyer, to any judge with jurisdiction over the dispute.⁴⁹ Applicants have broad rights to apply for themselves and to have others apply on their behalf in cases when they cannot protect themselves.⁵⁰ The *tutela* petition need only contain the basic facts necessary for the judge to address the case, such as the parties in question and the right threatened.⁵¹ There is no formal written process, and in some cases, it may even be verbal.⁵²

Once a *tutela* has been submitted, it is incumbent upon the judges to respond within very limited time frames. Unless the *tutela* is reviewed or appealed, it must be ruled on within 10 days.⁵³ In sum, it is a fast, accessible tool for the enforcement of fundamental rights. This fact must go some way to explaining its popularity. In its first full year of operation, 8,060 *tutela* decisions were submitted to the Constitutional Court, which receives all *tutelas* to consider for discretionary review.⁵⁴ By 2005, that annual number had reached 221,348, and totalled around 1,400,000 *tutelas* since their establishment 14 years earlier.⁵⁵

The *tutela*, however, retains some procedural limitations. The Colombian *tutela*, in contrast to some of the broader equivalents in other Latin American nations, can only be invoked to protect 'fundamental' rights found in the 1991 constitution.⁵⁶ While these rights form an expansive list, they are far from exhaustive. The Constitutional Court has tempered this requirement to some extent, by extending the application of *tutelas* to other rights where they have an intimate connection with a fundamental right, or are of the requisite status through their natural character.⁵⁷ The court has also taken a broad interpretation of the requirement that a fundamental right be 'threatened' before a *tutela* can be successful.⁵⁸

Article 86 of the Colombian Constitution dictates that the *tutela* is only to be utilised where no other judicial mechanisms are available. In practice, this requirement has also been softened by the regulating statute and judicial interpretation. The availability of other remedies, therefore, is assessed in light of the applicant's position, and the effectiveness of other options for that applicant. Moreover, the *tutela* can be invoked as an interim measure in cases where irremediable damage would otherwise result.⁵⁹

Limitations are also present for cases in which a *tutela* is invoked against private individuals. The law makes provision for a number of circumstances in which a *tutela* is possible against private individuals. These are limited to situations where a private actor exercises a public function, or there is a particular relationship of disadvantage between the parties.⁶⁰ Hence, while the *tutela* acts to some degree as a check on private power, there is no wide-ranging system of *tutelas* against individuals.⁶¹

A judge can order a wide range of remedies for *tutela* applicants. A broad range of provisional remedies are envisaged by the law, from the suspension of the act in question, to measures to protect the right or limit the harm.⁶² The protection provided by final judgment is intended, insofar as possible, to return the petitioner to their earlier position in the case of a positive act, or in cases of omissions or rejections, to compel the body to protect the right.⁶³ Importantly, these remedies extend to a declaration of unconstitutionality, which can have widespread implications on the provision of public services.

Critically Assessing the Colombian System

Equality law, in its many forms, is always an expressly socio-legal enterprise. While all forms of law exist within a social context, this is particularly true of efforts to combat discrimination, itself a social phenomenon. Therefore, while the characteristics of the Colombian legal system outlined above are central to understanding the legal situation, they form only part of the larger questions of legal efficacy. The jarring contrast between the evident discrimination and disadvantage present in Colombian society, with the progressive case law evident in the courts, must prompt questions of effectiveness.

The *tutela* mechanism has been the subject of controversy within Colombian judicial circles. Some have diagnosed Colombian society with 'tutelitis', which has exacerbated the already litigious nature of the Colombian justice system.⁶⁴ Many judges, particularly those outside the Constitutional Court, have complained about the increased workload. One judge even complained that the proliferation of *tutelas* had contributed to the development of an ulcer.⁶⁵ There can be little

doubt that many *tutelas* are frivolous,⁶⁶ but this need not be a damning criticism. The one-quarter of *tutela* actions which are successful indicate the writ serves to protect fundamental rights in a significant number of cases.⁶⁷ The strain on the judicial system must be balanced against the good done in these cases.

While the awareness of the *tutela* as an option for ordinary citizens has resulted in its heavy use, it has also contributed to the increased awareness of fundamental rights within the Colombian society. Moreover, it appears that the very pressure applied to the judges under the time-limited *tutela* system is at least partly responsible for the popularity of the writ. For example, one study found 77% of respondents believed the *tutela* helped overcome inefficiency in the Colombian judicial system.⁶⁸ In turn, the overwhelming popularity and the easy accessibility of the *tutela* have helped build a culture of rights within Colombia.⁶⁹ In situations where a culture of legality is as important as the nature of the law itself, this is a particularly important advance.⁷⁰

At the same time, the limits of the *tutela* and the legal system at large must also be recognised. A culture of impunity still prevails in parts of the Colombian political system. The continuing problem of extra-judicial killings by security forces is but one aspect of this difficulty.⁷¹ At times, the tensions between the courts and President Uribe have verged on developing into a major political crisis.⁷² Equally, beginning in 2001, the interference with judicial investigations by the Prosecutor-General, a political appointee, has also added to the suggestion that the rule of law is yet to be firmly entrenched within the complex politics of Colombia.⁷³ Without these foundational elements, the changes rendered by *tutelas* and constitutional decisions re-

main limited. Nevertheless, recognising the limits of the Constitutional Court need not render it wholly irrelevant, and it continues to make important decisions in highly-politicised fields.⁷⁴

At the foundation of most aspects of discrimination and inequality in Colombia are fundamental structural issues. Narco-trafficking and the enduring conflict are major contributors to poverty and mistreatment. While the law may, for example, be called upon to treat the victims of displacement equally, it is beyond the reach of the law alone to prevent the disproportionate impact of the conflict on the indigenous and Afro-Colombian population.⁷⁵ Moreover, while the Constitution may demand the equal treatment of men and women, it can only attend to the social institution of machismo indirectly. At these margins, the realisation of equality falls as much in the realm of politics and development as it does in the realm of law. Law may

help change culture and politics to some extent, but it is also subject to both.

Conclusion

Colombia's constitutional system serves as an example of both the potential and the limits of the legal regulation of equality. From the perspective of equality law, the 1991 Constitution and its legal heritage of rights and access to justice must be considered as a model for development in other fields. In particular, the ready access to the *tutela* action has empowered many citizens with the capacity to protect their fundamental rights. So too, however, does the state of discrimination in Colombia stand as a testament to the limits of law. Within the complex and tumultuous political environment that persists in Colombia, it is clear that the promise of equality must be delivered by the government as much as by the courts.

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² National Administrative Department of Statistic (DANE). "Population Counter", available at http://www.dane.gov.co/reloj/reloj_animado.php (accessed 5 January, 2008).

³ For a full discussion of Colombian history, see Safford, Frank and Marco Palacios. *Fragmented Land, Divided Society* (2002). For a much briefer introduction with a modern focus, see United States Department of State. "Colombia: Background Note", available at <http://www.state.gov/r/pa/ei/bgn/35754.htm> (accessed 2 January, 2008).

⁴ See, for an excellent overview of war and politics in modern Colombia, Sánchez, Gonzalo G. "War and Politics in Colombian Society" (2000) 14 *International Journal of Politics, Culture, and Society* 19.

⁵ Presidents Betancur and Pastrana presided over these unsuccessful negotiations: see United States Department of State, above note 2.

⁶ Tuft, Eva Irene. "Integrating a Gender Perspective in Conflict Resolution: The Colombian Case", in Skjelsbaek, Inger and Dan Smith (eds.), *Gender, Peace, and Conflict* (2001) 139.

⁷ International Crisis Group. "Colombia's New Illegal Armed Groups", *Latin America Report No 20*, (2007).

⁸ United Nations High Commissioner for Human Rights. "Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia", UN Doc A/HRC/4/48 (2007) 5; Human Rights Watch. "World Report 2007: Colombia" (2007), available at <http://hrw.org/englishwr2k7/docs/2007/01/11/colomb14884.htm> (accessed 22 December, 2007).

⁹ Internal Displacement Monitoring Centre. "Almost 4 Million Colombians Displaced by Violence Be-

tween 1985 and 2007”, available at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/CC05B30C4C94EC96802570B8005A7090?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/CC05B30C4C94EC96802570B8005A7090?OpenDocument) (accessed 9 January, 2008).

¹⁰ For example, 80% of the mammoth US-Colombia aid package known as Plan Colombia was devoted to military assistance. (Isacson, Adam. “Plan Colombia - Six Years Later”, Center for International Policy Report (2006).)

¹¹ It has proven particularly difficult to obtain accurate figures on the size of the Afro-Colombian population, and much depends on the measure of ethnicity used. According to one source, 26% of the Colombian population have some African blood. (Salazar, Hernando. “¿Colombia hacia la integración racial?”, BBC News (London), 25 May, 2007, available at http://news.bbc.co.uk/hi/spanish/latin_america/newsid_6691000/6691309.stm (accessed 22 December, 2007).) However, government figures, which rely on self-identification, put the figure at 10.62%. (National Administrative Department of Statistics (DANE). “Colombia: Una Nación Diversa” (2007) available at http://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf (accessed 20 December, 2007).)

¹² Inter-American Commission on Human Rights. “Annual Report of the IACHR, 2006” (2006) available at <http://www.cidh.org/annualrep/2006eng/Chap.4a.htm> (accessed 18 December, 2007).

¹³ National Economic and Social Policy Council, National Planning Department. “Affirmative Action Policy for the Black or Afro-Colombian Population”, Document CONPES 3310 (2004).

¹⁴ Salazar, above note 10.

¹⁵ Inter-American Commission on Human Rights, above note 11.

¹⁶ Salazar, above note 10.

¹⁷ United Nations High Commissioner for Human Rights, above note 7, 15.

¹⁸ National Planning Department (DNP), Directorate of Sustainable Territorial Development. “The Indigenous Peoples of Colombia on the Threshold of the New Millennium” (2004) 33.

¹⁹ Ibid.

²⁰ United Nations High Commissioner for Human Rights, above note 7, 40.

²¹ Ibid, 15.

²² Ibid.

²³ Ibid.

²⁴ Reding, Andrew. “Sexual Orientation and Human Rights in the Americas”, World Policy Reports, Project for Global Democracy and Human Rights, World Policy Institute (2003) 35-6.

²⁵ United Nations High Commissioner for Human Rights, above note 7, 43.

²⁶ UN Special Rapporteur on Violence Against Women. “Report of the UN Special Rapporteur on Violence Against Women, Mission to Colombia”, UN Doc E/CN.4/2002/83/Add.3 (2001) 13. See also Amnesty International. “Colombia: Scarred Bodies, Hidden Crimes: Sexual Violence Against Women in the Armed Conflict”, Amnesty International Report No. 23/040/2004 (2004) 26; United Nations High Commissioner for Human Rights, above note 7, 36-7.

²⁷ Arthur Alexis. “Rule of Law for Women?: Women, Law and Development in Colombia”, unpublished manuscript, on file with author (2007).

²⁸ Ibid.

²⁹ Equality Now. “Submission to the United Nations Commission on Human Rights” (1997), available online at www.equalitynow.org/english/campaigns/un/unhrc_reports/unhrc_colombia_en.pdf (accessed 18 December, 2007).

³⁰ United Nations High Commissioner for Human Rights, above note 7, 14.

³¹ Ibid.

³² Ibid.

³³ Article 13, Constitution of Colombia, 1991.

³⁴ While implicit in the first paragraph of Article 13, this is made more explicit in the second: “The State shall promote the necessary conditions for real and effective equality and take action on behalf of groups that are discriminated against and marginalized”.

³⁵ For a full table of the rights relevant to indigenous communities, see National Planning Department (DNP), above note 17, 52.

³⁶ Article 93, Constitution of Colombia.

³⁷ Carias, Allan Brewer. "Some Aspects of the 'Amparo' Proceeding in Latin America as a Constitutional Judicial Mean Specifically Established for the Protection of Human Rights", University of Maryland School of Law Colloquium Paper (2007) 10, available online at http://digitalcommons.law.umaryland.edu/iclc_papers/2/ (accessed 22 November, 2007).

³⁸ See, for example, case C-481 of 1998, on homosexual teachers and case C-507 of 1999 on gays in the military. These and other Constitutional Court cases can be accessed through the Constitutional Court website at <http://www.constitucional.gov.co/corte/>.

³⁹ See case C-530 of 1993.

⁴⁰ López Stirup, Henrik. "Discriminación en la jurisprudencia constitucional de Colombia", Paper presented to the Andean Commission of Jurists Andean Regional Course for Law Professors and Officials of Non-Government Human Rights Organisations (2002) 6, available online at www.cajpe.org.pe/RIJ/bases/nodiscriminacion/LOPEZ.PDF (accessed 22 November, 2007).

⁴¹ See case C-481 of 1998.

⁴² Such as those listed in Article 13: sex, race, national or family origin, language, religion, political opinion or philosophy. This list is non-exhaustive: see cases C-481 of 1998 and C-112 of 2000.

⁴³ See case C-673 of 2001.

⁴⁴ Ibid.

⁴⁵ See case C-112 of 2000.

⁴⁶ See case C-134 of 1994.

⁴⁷ For an introduction and comparison of the various forms of *tutela*, or *amparo*, see Brewer, above note 36.

⁴⁸ Article 86, Constitution of Colombia ('la protección inmediata de sus derechos constitucionales fundamentales, cuando quiera que éstos resulten vulnerados o amenazados por la acción o la omisión de cualquier autoridad pública').

⁴⁹ Article 10, Decree 2591 of 1991. This and other statutes can be found through the Bank of the Republic legal portal, available at <http://juriscol.banrep.gov.co:8080/>.

⁵⁰ Ibid.

⁵¹ Ibid, Article 14.

⁵² Ibid.

⁵³ Ibid, Article 29; Article 86, Constitution of Colombia.

⁵⁴ Cepeda Espinosa, Manuel José. "How Far May Colombia's Constitutional Court Go to Protect IDP Rights", *Forced Migration Review* (December, 2006) 21-2.

⁵⁵ Ibid.

⁵⁶ Articles 11-41, Constitution of Colombia.

⁵⁷ See case T-406 of 1992; Cifuentes Muñoz, Eduardo. "La Acción de Tutela en Colombia" 3(1) *Ius Et Praxis* 165-6.

⁵⁸ Morgan, Martha I. "Taking Machismo to Court: the Gender Jurisprudence of the Colombian Constitutional Court" (1999) 30 *University of Miami Inter-American Law Review* 253, 278.

⁵⁹ Cifuentes, above note 56, 7; Case T-225 of 1993.

⁶⁰ Article 42, Decree 2591 of 1991; Cifuentes, above note 56, 6. There are also some provisions for *tutela* actions in cases of the correction or production of information held by private individuals.

⁶¹ Case T-251 of 1993; Cifuentes, above note 56, 6.

⁶² Article 7, Decree 2591 of 1991.

⁶³ Cifuentes, above note 56, 9-10; Article 23, Decree 2591 of 1991.

⁶⁴ Morgan, above note 57, 318-20.

⁶⁵ "Magistrados, con ulcera por tutelas", *El Tiempo* (Bogotá), Aug. 27, 1997.

⁶⁶ See, Morgan, above note 57, 319-21, citing the evidence of Judge Jose Roberto Herrera and Justice Jorge Arango Mejia.

⁶⁷ Mercer, Pamela. "Colombians Winning Quick Redress From Courts with Writs", *New York Times* (New York), Nov. 29, 1996, available online at <http://query.nytimes.com/gst/fullpage.html?res=9D0CE1DF143CF93AA15752C1A960958260> (accessed 5 January, 2008).

⁶⁸ Ibid., citing a study by the Centre of Judicial Investigations at Los Andes University.

⁶⁹ Cepeda Espinosa, M. J. "Democracy, State, and Society in the 1991 Constitution: The Role of the Constitu-

tional Court”, in Posada-Carbo, Eduardo (ed.). *Colombia: The Politics Of Reforming The State* (1998) 91.

⁷⁰ See the comments of Brewer, above note 36, 27. More generally, see Golub, Stephen. “The Legal Empowerment Alternative”, in Carothers, Thomas (ed.). *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006) 310.

⁷¹ Human Rights Watch. “Colombia: US Congress Should Maintain Hold on Military Aid” (Oct. 18, 2007), available at <http://hrw.org/english/docs/2007/10/18/colomb17131.htm> (accessed November 22, 2007); United Nations High Commissioner for Human Rights, above note 7, 11.

⁷² Human Rights Watch. “Colombia: Uribe Must Respect Judicial Independence” (Oct. 9, 2007), available online at <http://hrw.org/english/docs/2007/10/09/colomb17057.htm> (accessed November 22, 2007); “El Presidente Álvaro Uribe exige investigar el origen de un testimonio de un paramilitar que lo vincula con un asesinato”, *Semana Magazine* (Bogotá), 10 Aug., 2007, available online at http://www.semana.com/wf_Info-Articulo.aspx?idArt=106783 (accessed 9 January, 2008).

⁷³ “Osorio devastó la Fiscalía”, *El Espectador* (Bogotá), 5 Jan., 2008, available at <http://www.elespectador.com/elespectador/Secciones/Detalles.aspx?idNoticia=20020&idSeccion=22> (accessed 9 January, 2008); Human Rights Watch. “A Wrong Turn: The Record of the Colombian Attorney General’s Office” (Nov. 2002), available at <http://www.hrw.org/reports/2002/colombia/colombia1102.pdf> (accessed 9 January, 2008).

⁷⁴ See, for example, case C-370 of 2006, addressing the Justice and Peace Law which governs the demobilisation of paramilitaries. This is discussed in Córdoba Triviño, Jaime. “Comunicado de Prensa Sobre la Demanda Contra la Ley de Justicia y Paz : Ley 975 de 2005”, Press Release, Corporación Colectivo de Abogados (18 May 2006).

⁷⁵ See, for discussion, Cepeda, above note 53, 21-2.