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Intelligence under Democratic Rule: Formal Oversight and Reform in Colombia's Evolving Democracy

Schilling, Pieter

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Intelligence under Democratic Rule: Formal Oversight and Reform in Colombia's Evolving Democracy

Pieter Schilling

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Dr Zakaria Shiraz, RA 20

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Abstract

This thesis considers how the process of democratic consolidation in Colombia since the promulgation of the 1991 Constitution shaped formal mechanisms of intelligence oversight until the establishment of the DNI in 2011. Inspired by the paradox of secrecy and accountability in intelligence agencies, it asks the following question: "How has democratic consolidation in Colombia since the 1991 Constitution until the creation of the DNI affected formal intelligence oversight mechanisms?" This qualitative study used a case-study approach using Bühlmann et al.'s democracy matrix, which was adjusted for vertical accountability, horizontal accountability, and rule-of-law compliance. It also uses deductive and inductive thematic coding on constitutional provisions, statutory laws, court rulings, and institutional reforms during three key periods (post-1991, Uribe period, and transitional DNI). The findings show that the Constitution of 1991 gave provisions for moderate vertical and horizontal oversight through parliamentary control and judicial review, but enforcement fell short in operational terms. The Uribe administration witnessed a further decline in formal legislative oversight, even as judicial and prosecutorial bodies addressed the abuses at the highest levels, as repeated scandals showcased a disconnect between laws and practices. The abolishment of the DAS and creation of the DNI under Santos were thus reactive, scandal-driven reforms that strengthened internal controls but at the same time displayed the non-linear paths of democratic consolidation.

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1. Introduction

Colombia's reforming of its intelligence sector serves as an interesting case study of the complex interaction between the ongoing process of democratic consolidation and the democratic reforms within intelligence agencies. This thesis examines the regulatory and oversight policies related to intelligence in Colombia within the context of democratic consolidation. The core research question is: *"How has democratic consolidation in Colombia, since the 1991 Constitution until the creation of the DNI, affected formal intelligence oversight mechanisms?"*

Most studies on intelligence-sector reform center either on post-authoritarian clean breaks or on militaries and police instead of secret services (Born & Leigh, 2005, p. 17). In Colombia, intelligence reforms were not strategy-based, but rather as a response to major scandals (Sanabria-Pulido & Leyva, 2022, pp. 1931-1932), and Latin American work often treats intelligence oversight as a by-product of broader security-sector reform (Estévez, 2014, p. 553; Palma, 2020, p. 489), leaving gaps between formal oversight mechanisms, the actual supervision of scandals, and the enduring impact these attempts have had on deepening democratic governance (Matei & Bruneau, 2011, p. 671).

Using an adapted democracy matrix, this thesis provides a longitudinal single-case study of formal intelligence oversight, tracing relevant institutional shifts from the Administrative Department of Security (DAS) era to the establishment of the National Intelligence Directorate (DNI). Additionally, the significance lies in its contribution to understanding how democratic consolidation affects formal oversight under scandal and conflict by mapping the parallel evolution of oversight mechanisms.

The key findings of this research are that democratic consolidation, combined with many scandals, has led to significant improvements in legislative and judicial oversight in

Colombia. However, these changes revealed gaps in the formal oversight structures and the actual implementation of these mechanisms. This research is significant as it contributes to understanding Colombia's societal and intelligence evolution, which can then be applied to other nations going through the democratic consolidation process. Similarly, Estévez (2014, p. 577) has also observed this pattern of reactive reform in other Latin American countries, showcasing that this pattern is not unique to Colombia. More broadly, the conclusions contribute to the international discourse on the reform of security institutions in democratic societies, highlighting the factors that enable and impede significant oversight.

This thesis is organized as follows. It starts with the literature review and theoretical framework, continues with the research design, which is followed by the results and discussion, and concludes with a conclusion by answering the research question.

2. Literature Review and Theoretical Framework

2.1 Case-Specific Literature on Colombian Intelligence Oversight: 1991 to Present

A review of recent literature shows that since its promulgation in 1991, Colombia's approach to intelligence oversight has significantly evolved, bringing it from a preliminary stage with limited legal regulation to a more institutionalized setting. For almost sixty years before the Constitution of 1991, Colombia's intelligence services operated without any thorough legal frameworks defining their functions and boundaries. Instead, this situation created a 'legal limbo' in which the scope and limitations of intelligence activities were never defined by law (Rugeles, 2013, p. 140). 'Ley 1288' of 2009 was an initial attempt to strengthen the legal framework for the intelligence and counterintelligence agencies (Giraldo & Milena, 2018, p. 30), though 'Ley Estatutaria' (Statutory Law) 1621 nonetheless marked a much more momentous shift from theory into practice regarding national intelligence. This law came about after more than half a century of limited formal regulation. (Ríos & Harbey, 2016, p. 7).

The Constitution of 1991 laid the groundwork for reforms directed at aligning state institutions such as intelligence agencies with democratic principles and the protection of fundamental rights (Ríos & Harbey, 2016, p. 21). Statutory Law 1621 has a further purpose of regulating intelligence activities in a more detailed manner in the Colombian context, while emphasizing that such activities must adhere to human rights (Giraldo & Milena, 2018, p. 15). The 'Corte Constitucional' was very relevant in shaping this legal landscape. It reviewed the intelligence law and found the need for statutory regulation due to the fundamental rights implications (González Cussac, 2016, p. 20).

The formal establishment of the 'Junta de Inteligencia Conjunta' (JIC) has been one of the most important developments of democratic consolidation within the intelligence sector in

Colombia. It defines the mission and priority objectives for the national intelligence and counterintelligence agencies through the reserved ‘Plan Nacional de Inteligencia’. This plan is presented annually and makes a considerably structured and orderly approach towards intelligence planning (Giraldo & Milena, 2018, p. 49). Furthermore, the establishment of the ‘Legal Commission for the Monitoring of Intelligence and Counterintelligence Activities’ provides a mechanism for political oversight of intelligence operations, as it guarantees legality and efficient use of resources, which then also aims to improve public trust in intelligence agencies (Saavedra-Medina, 2024, p. 345).

Followed by years of controversies, human rights violations, and other scandals, the dissolution of the DAS and the subsequent creation of the DNI mark the starting point of a significant shift. The establishment of the DNI as a civilian intelligence agency sought to ensure the political controls needed to further improve public trust in the protection of fundamental rights. Statutory Law 1621 enabled the formation of the DNI, setting out the intelligence responsibilities to other state entities that were founded on the premise of human rights respect (Giraldo & Milena, 2018, p. 59). Despite the many laws that have been implemented and the studies about them, their effectiveness remains unexplored. This exposes a gap between the rule of law and its compliance.

2.2 Democratization in Intelligence Oversight

A key concept applied in this thesis is “democratization in intelligence oversight.” This means that all state agencies, including secret institutions such as intelligence agencies, comply with the law and uphold accountability in democratic governance (Andregg & Gill, 2014, p. 489).

A considerable body of literature has been produced on how new and transitioning democracies deal with reform in the security and intelligence sectors. While most countries focus mainly on reforming the military and police, other governments often exclude their intelligence agencies from such provisions after they have emerged from authoritarian rule or conflict. This has primarily been justified on the basis of the secretive nature of intelligence work, which protects the agencies from scrutiny, therefore, people usually do not see the necessity for reform until there is a major scandal.

Because of this, consolidating a democracy often requires that intelligence agencies catch up, as they often trail behind with their democratic evolution compared to other government sectors (Dammert, 2007, p. 9). These studies, however, are focused on what ought to be rather than assessing how Colombian intelligence agencies have internalized democratic oversight norms, further exposing another gap in the literature.

2.3 Theories of Intelligence Accountability

The theoretical framework for understanding intelligence oversight in democracies is often based on the concept of civilian control and checks and balances. Bruneau and Boraz (2007) propose that “*Democratic control of intelligence can probably best be defined as the sum of two parts—direction and oversight. Direction is civilian guidance to a nation’s intelligence community with respect to its overall mission. This guidance is typically embodied in some national security strategy as well as the day-to-day feedback an intelligence organization will receive from the civilians it serves. Oversight identifies the processes a democratic government has in place to review all aspects of an intelligence community’s organization, budget, personnel management, and legal framework for intelligence operations*” (p. 13). This is a significant framework for understanding why

intelligence agencies might still act aggressively even within a democracy. Although this framework is useful for Intelligence Studies, it has rarely been applied to Colombia's unique scandal-driven reforms, leaving another gap in the literature.

A key theoretical point remains that democratic oversight over intelligence does not want to declassify secrets to the public, but to ensure the legality and ethicality of secret activities are upheld. Born and Leigh (2005, p. 77) propose a democratic compromise that is both more democratically aligned and effective in terms of oversight mechanisms. In this compromise, elected representatives would be allowed to access classified documents on behalf of the public.

Intelligence and democracy are bound to run at odds with each other. However, in this way, they can at least coexist. This compromise is not a static condition, as it will continually need to be re-evaluated, discussed, and readjusted as security and democracy require ongoing adjustments. In other words, as threats emerge and develop and as public democratic expectations increase, the oversight framework will also have to change (Born & Leigh, 2005, p. 23).

This dynamic perspective will guide the analysis in Colombia, which, across different periods of time, came with paradigm shifts in threat perceptions and political priorities.

2.4 Intelligence Oversight in Post-Conflict and Transitional Contexts

Theories for Security Sector Reform (SSR) claim that the consolidation of peace and democracy after any conflict requires a transformation of security institutions, which also includes military, police, and intelligence services, into professional bodies accountable to civilian authority and respect for human rights (Ball, 2005 p. 30; Sedra, 2010, p. 124). In this regard, SSR is crucial for democratic consolidation and should be guided by principles of

civilian oversight, transparency, and a legal framework (DCAF, 2015, p. 6). Concepts of SSR are particularly relevant for Colombia since the reform of intelligence processes had to occur during an ongoing internal conflict rather than in a post-conflict setting. Often, these reforms involved trade-offs between security and accountability, or in other words, peace versus justice. Governments may hesitate to implement strong oversight mechanisms, fearing that these will hinder intelligence operations during a delicate peace process (Snyder & Vinjamuri, 2004, p. 6).

Alternatively, liberal peacebuilding theory suggests that making peace durable and legitimizing democracy implies confronting past abuses and encouraging transparency even within institutions not typically known for their transparency, like intelligence agencies (Sriram, 2007, p. 585). Most SSR and liberal peacebuilding studies, however, mainly examine post-authoritarian transitions. This thesis fills the gap between the two by analyzing Colombia's reforms under ongoing conflict.

2.5 Theoretical Assumptions and Expectations

This thesis builds on the theoretical assumption that democratic consolidation requires both institutional changes and the internalization of democratic norms by state institutions such as intelligence agencies (Bruneau & Boraz, 2007, pp. 12-13). It assumes that effective intelligence oversight derives from civilian mechanisms of control, legal accountability, and the presence of internal and external checks. Based on this hypothesis, the research expects that since the 1991 Constitution, reforms in Colombia are likely to reflect gradual improvements in structural and performance aspects of intelligence oversight. Nevertheless, because of Colombia's duration of internal conflict, followed often by a security-first approach, the thesis will assume that democratization, as far as the intelligence sector is

concerned, has occurred unevenly or in reaction to scandals rather than through orderly reform processes. Therefore, oversight will be expected to demonstrate different effectiveness across different periods and institutions.

2.6 Conceptual Definitions

To ensure the overall clarity of this thesis, the key concepts are defined as follows. The *intelligence sector* encompasses all government branches and units responsible for carrying out duties related to intelligence and counterintelligence work. In the case of Colombia, such intelligence and consideration branches would include dedicated civilian agencies (such as the DAS and its successor, the DNI), military intelligence units, and financial intelligence agencies (Boraz, 2007, p. 3).

Oversight frameworks refer to all constitutional, legal, and administrative mechanisms for monitoring and controlling intelligence agencies. For example, this would include laws for legislative oversight, procedures for judicial authorization of surveillance, or internal auditing requirements. In practice, effective oversight should combine internal controls, executive direction, legislative scrutiny, judicial review, and external mechanisms like civil society participation (Born & Leigh, 2005, p. 137).

Democratization processes refer to many institutional changes, such as going from an authoritarian regime with limited freedom to a democracy with freedom of speech, transparency, and human rights. Tilly (2000) defines it as a “*movement toward broad citizenship, equal citizenship, binding consultation of citizens, and protection of citizens from arbitrary state action*” (p. 1). *Democratic consolidation* is the evolution and strengthening of this process. Democratization becomes democratic consolidation “*when it becomes the only game in town behaviorally, attitudinally, and constitutionally*” (Durmaz, 2017, p. 1).

2.7 Conceptual Framework

In order to systematically assess the extent to which Colombia's intelligence sector has democratized, this thesis utilizes the democracy matrix set out by Bühlmann et al. (2012). This framework is based on the three principles of equality, freedom, and control, which are then further operationalized through measurable subcomponents.

This particular research highlights the control dimension, which is concerned with how power under democracy is limited, controlled, and held accountable. The measurable subcomponents that Bühlmann et al. (2012, p. 122) use for control are 'vertical accountability' and 'horizontal accountability'. For this research, those subcomponents were adapted to the context of formal intelligence oversight. The rule of law was a broader dimension in their (2012, p. 124) framework, which was also adapted into 'rule of law compliance' for this thesis, as this showcases how effective these oversight mechanisms are in practice in ensuring lawful intelligence activities. These three concepts will be measured through the following indicators, then classified into low, moderate, or high levels of fulfillment.

1. Vertical Accountability: The extent to which an intelligence agency is held accountable to elected officials, such as parliaments and their committees. If there is no formal legislative oversight, meaning intelligence agencies do not have to report to parliament, this will be classified as low. If parliamentary powers do exist but do not contain a specialized oversight committee or lack enforcement powers, this will be classified as moderate. If specialized oversight bodies exist with the abilities to access classified information, conduct hearings, and enforcement powers, this will be classified as high.
2. Horizontal Accountability: The existence and functioning of the various intra-governmental oversight institutions that operate independently of the intelligence

agencies, such as constitutional courts, independent auditing bodies, or inspector generals within the executive branch. If intelligence agencies go unchecked due to a lack of legal or judicial constraints, this will be classified as low. If the structural monitoring of these activities is weak, but the judiciary or other actors regularly intervene, this will be classified as moderate. If independent oversight bodies can shape intelligence practices through actively investigating and sanctioning intelligence practices, this will be classified as high

3. Rule of Law Compliance: The degree to which intelligence practices adhere to legal norms, including due process, statutory limits on surveillance, and respect for human rights. If scandals are recurring and laws are ignored, this will be classified as low. If the legal frameworks exist but agencies only partially adhere to them, this will be classified as moderate. If intelligence activities are performed according to the rule of law, this will be classified as high

This matrix enables the research to go beyond merely a descriptive approach and into a democratic assessment of the intelligence reform efforts. In the study, each historical period after the 1991 Constitution that is analyzed will be examined to check the improvements in one or more of the above three categories. Using the Democracy Matrix, this thesis aims to explore whether changes in Colombia's intelligence sector are just institutional changes or if they represent a more profound process of democratic consolidation within security governance.

3. Research Design and Methods

3.1 Research Design

This research adopts a qualitative single-case study design focusing on Colombia, as this provides an in-depth analysis of contemporary phenomena within a real-life context. In this case, the contemporary phenomenon relates to the change in intelligence oversight mechanisms, while the context refers to Colombia's political and legal environment since the Constitution of 1991.

A single-case study is justifiable because Colombia is an atypical and crucial case that initiated democratic reforms upon the 1991 Constitution without a complete regime break, as Colombia still undergoes an internal conflict. This allows for a rich contextual analysis of how democratic consolidation can influence intelligence oversight over time. The method is mainly descriptive-explanatory, describing how oversight structures and practices have changed and then explaining these changes in relation to democratic consolidation processes.

The case study covers the period from 1991 until the creation of the DNI in 2011. This timeframe allows the analysis to focus on several important phases, such as the post-1991 institutional redesign phase, the post-2000 era of security challenges and scandals under President Uribe, and the beginning of Santos's term. Focusing on one country will allow the research to trace developments longitudinally and capture the nuances that may not be captured in comparative studies. These findings will be specific to Colombia, however they can still lend insight into other evolving democracies with intelligence sector reform. The unit of analysis is the national intelligence governance system of Colombia, consisting of laws, institutions, and oversight practices. These are analyzed holistically. This design allows for an assessment of the interactions between formal democratic institutions and the covert intelligence sector into one coherent narrative.

3.2 Data Collection

This thesis will rely on documentary evidence as the primary data source. This data will include government reports, legal norms, and court rulings. These sources will be collected through online databases such as the Corte Constitucional de Colombia and Sistema Único de Informacion Normativa. For sources in Spanish, DeepL will be used to translate them into English to ensure a sufficient understanding of the source.

The court rulings will be found through Corte Constitucional de Colombia by using the following search terms : "actividades de inteligencia", "control político", "comisión legal de inteligencia", "supervisión legislativa" "derechos fundamentales y actividades de inteligencia", "principios democráticos y seguridad nacional" and "revisión constitucional de inteligencia".

The court rulings published between 1991 and 2011 related to intelligence activities, oversight mechanisms, or the balance between security and fundamental rights were prioritized. These rulings assess whether an intelligence agency adheres to democratic and legal principles and display the judiciary's power as an oversight mechanism.

The constitution, laws, and decrees were found through Sistema Único de Informacion Normativa by searching for the specific laws relevant to formal intelligence oversight. This includes the 1991 constitution (the foundational legal framework), Law 57 of 1985 (an earlier law for more transparency), Law 734 of 2002 (the Civil Service Disciplinary Code), Law 1288 of 2009 (a law aimed at regulating intelligence and counterintelligence activities) Law 1444 of 2011 (a law that gave the president extraordinary powers), and Decree 4179 of 2011 (The executive decree that dissolved the DAS and created the DNI).

3.3 Data Analysis

The collected data was analyzed using a thematic analysis method involving systematically reviewing and interpreting information provided by public documents to extract meaningful information. Once all the relevant documents had been read thoroughly, they were coded using ATLAS.ti. These codes were focused on oversight mechanisms, accountability, control, and democratic principles. This was done both deductively and inductively to ensure the research followed its primary guidelines, but it also allowed unexpected themes to emerge.

To ensure comparability, a consistent coding scheme was applied across the different documents. These codes were then grouped into broader themes, with particular attention paid to the themes corresponding to the democracy matrix. For example, the codes that relate to Congress are classified under vertical accountability, while executive, judicial, or internal institutional checks are classified under horizontal accountability. Legal norms and protections for rights are grouped under compliance with the rule of law.

The frequency and context of themes were then mapped chronologically. This means studying which of the oversight themes occurred in the 1990s as opposed to the 2000s, and how the emphasis or meaning has changed over time. It becomes possible to understand the arrangement of coded data along the line of time: post-1991 reforms, developments during the Uribe era, and changes under Santos. Thus, the research might reveal periods in which certain oversight mechanisms were more present or absent.

Finally, the thematic findings and chronological trends were synthesized to create a well-rounded narrative conclusion for this thesis. By combining the patterns across laws, rulings, and institutional reforms, this thesis offers a nuanced perspective of how democratic consolidation has impacted formal intelligence oversight in Colombia.

3.4 Ethical Considerations and Methodological Limitations

This study did not involve human subjects or the collection of confidential or sensitive personal data. All sources were available to the public, so there was no requirement for ethical clearance or informed consent. However, the research still complied with high ethical standards by citing all sources transparently and properly, thus avoiding plagiarism and allowing the verification of its claims.

As a single case study, the goal is primarily to provide depth instead of generalizability. Colombia provides a solid foundation for understanding how democratic consolidation affects intelligence oversight, however, the findings may not fully apply to other national contexts. Moreover, reliance on documentary sources and secondary accounts introduces a potential bias as legal texts allow the exploration of formal structures but cannot fully account for implementation in practice. Since the research does not include interviews with personnel working in the Colombian formal intelligence sector, it is left unexplored. Lastly, this research is also limited due to the inability to read Spanish texts, but instead, being forced to use translation tools such as DeepL. While most of the documents are likely translated and interpreted correctly, there is a minor risk of misinterpreting specific texts, which should be kept in mind.

4. Results and Discussion

4.1 Post-1991 Constitutional Reforms: Laying the Groundwork for Oversight

This section examines how the 1991 Constitution provided grounds for formal intelligence oversight in Colombia, particularly through early institutional and legal innovations. It considers the beginning of an accountability regime, both vertical and horizontal, and the compliance with the rule of law during this foundational period. Bruneau and Boraz (2007, p. 14) describe this phase as an institutional 'direction' phase in which democratic regimes embed the oversight functions within the legal norms.

4.1.1 Vertical Accountability

The new constitutional order strengthened vertical accountability. The 1991 Constitution (Constitución Política de Colombia, 1991) reaffirmed the central function of Congress in preventing the executive from exercising its power. It should, therefore, ensure that the legislative branch performs political control over government entities, which means being able to summon any officials (including heads of security agencies) for questioning and demanding reports from them. In a broad sense, it implies that intelligence operations would be subjected to oversight by representatives who themselves are elected through democratic processes. The concept of parliamentary oversight over intelligence, a fundamental aspect of democratic control, had thus gained legal recognition, even without a specialized intelligence committee. Furthermore, in its 1991 charter (Constitución Política de Colombia, 1991), the public's right to access official information, with exceptions, was granted. This is built on earlier transparency laws like Law 57 of 1985 (Congreso de Colombia, 1985).

Article 74 of the new Constitution (Constitución Política de Colombia, 1991) guarantees every citizen's right to access public documents, thus establishing a foundation for

transparency of government operations, possibly including declassified intelligence archives. This can be limited by provisions for classifying information for national security reasons, although this proposed secrecy now must be legally justified and shown to be necessary. Nevertheless, this provision provided a basis for public oversight, which created an early balance between state secrecy and transparency in the oversight framework. This brought the level of vertical accountability to moderate.

4.1.2 Horizontal Accountability

The new Constitution (Constitución Política de Colombia, 1991) also bolstered horizontal accountability by creating and strengthening the institutions responsible for monitoring the exercise of power, including intelligence-related activities. Establishing a Constitutional Court in 1991 was especially crucial because it was given the authority to review laws and decrees, and now, even practices involving intelligence to ensure they adhered to human rights. Early jurisprudence by the Constitutional Court set important limits on security agencies. For example, in sentence T-525/92 (Corte Constitucional de Colombia, 1992b), the Court stressed the requirement that military intelligence operations must respect the fundamental right of the presumption of innocence. This sentence highlighted that information related to a person whom a court has not yet convicted must be looked at critically rather than as proven guilt. Additionally, intelligence investigations themselves must also adhere to fundamental rights such as privacy, meaning that any public statement made by security organs about an individual must be an exceptional security measure instead of a standard procedure, as this tarnishes the reputation of an individual who might not be convicted yet (Corte Constitucional de Colombia, 1992b). Through such decisions, the judiciary emerged as a robust oversight actor that was internally checking the security

operations of the executive, reflecting Born and Leigh's (2005, p. 137) recommendations to make intelligence accountable.

Other institutions enhanced by the 1991 Constitution contributed to oversight as well, for instance, the Inspector General's Office, which was empowered to discipline officials for wrongdoing (Constitución Política de Colombia, 1991, arts. 275-278), and the Ombudsman, which was given the task of protecting human rights (Constitución Política de Colombia, 1991, arts. 281-282). These institutions, together with the courts, instituted multiple avenues for horizontal accountability, thus ensuring that intelligence agencies could not only be accountable to the executive but also be subjected to scrutiny and legal accountability from the various state organs, making horizontal accountability moderate in this era.

4.1.3 Rule of Law Compliance

In the post-1991 era, Colombia's legal framework placed intelligence activities under the rule of law with respect for human rights. The 1991 Constitution, therefore, established rights to privacy, due process, and habeas data, which had far-reaching implications for the exercise of intelligence (Constitución Política de Colombia, 1991, arts. 15 & 29).

A significant case was in 1992 (Corte Constitucional de Colombia, 1992a), where the Constitutional Court set the right to habeas data as a guarantee wherein individuals remain in control of their personal information even when it is collected into state databases. Privacy was safeguarded by granting the citizens the right to know about data relating to them and to request corrections, thereby placing an obligation on state security agencies to deal with personal data lawfully. Moreover, the Court in the same ruling set limits on intelligence archives. It stated that while security organs can and should have all necessary information

for their functions, they cannot supply information on individuals to outsiders, except in legal documents such as criminal records (Corte Constitucional de Colombia, 1992a).

This rule was further elaborated in ruling C-114/93 (Corte Constitucional de Colombia, 1993) with an evaluation on provisions that required citizens to obtain a certificate of no criminal or insurgency records before authorization of certain activities. While the Court supported the security vetting process, it emphasized that only a conviction resulting from a valid judicial process should count as criminal antecedents. Any other intelligence or police file cannot be treated as official criminal records for fear of undermining the presumption of innocence. By this action, the Court ensured that the intelligence-gathered suspicions would not hold legal value against citizens without due process, showcasing a deepening of rule-of-law compliance.

Thus, early 1990s jurisprudence ensured that the handling of personal data, secrecy, surveillance, and use of information were all subjected to legal standards and rights protections, as intelligence activities had to be operated within the boundaries of the 1991 Constitution (Constitución Política de Colombia, 1991). These changes highlight that formal oversight in the 1990s was primarily judicial and legal. While detailed statutes on intelligence did not exist yet in Colombia, the new constitutional framework and court rulings did effectively place intelligence agencies under the rule of law and further aligned them with democratic values, making rule of law compliance moderate during this era.

4.2 Formal Intelligence Oversight in the Uribe Era (2002-2010)

This section analyzes the state of intelligence oversight under the presidency of Álvaro Uribe, a period in which reforms were attempted but abuses flourished. It assesses how democratic instruments of control operated as executive dominance increasingly asserted

itself, and as scandals involving intelligence proliferated. As Andregg and Gill (2014, p. 494) observe, democracies under security pressure often find it difficult to maintain civilian oversight systems. Colombia's experience during this period certainly reflects this tension.

4.2.1 Vertical Accountability

In Colombia, formal legislative oversight over intelligence agencies was still in a primary phase when Álvaro Uribe became President. Congress did not yet have a dedicated intelligence committee and only had limited oversight and ability to influence intelligence operations. The existing committees, such as the 'Comisión Segunda', on paper had jurisdiction to oversee intelligence agencies, however, in practice, they played a very minor role in overseeing intelligence agencies (Boraz, 2007, p. 6). Legislative bodies only had a nominal function of monitoring intelligence activities, as these operations were largely centralized under the executive (Boraz, 2007, p. 5). The lack of oversight led to unchecked activities within the DAS, which later evolved into a series of major scandals.

During Uribe's second term, these oversight gaps prompted legal reforms. In 2009, Law 1288 (Congreso de Colombia, 2009) was passed, which was Colombia's first modern intelligence law and was enacted to help strengthen formal accountability mechanisms for intelligence agencies. This law created boundaries for intelligence and counterintelligence operations and exercised parliamentary control by establishing a congressional intelligence oversight commission (Congreso de Colombia, 2009, Art 15). The commission had the authority to review classified activities and submit an annual confidential report to the plenary defense committees and the President with recommendations for improving intelligence governance. The commission could also summon the intelligence directors to appear before it

in hearings as part of Congress's political oversight, a great stride forward in legislative control (Congreso de Colombia, 2009, Art. 13-15).

Most of these reforms came at the end of Uribe's presidency and faced legal obstacles. Shortly after Uribe left office, the Constitutional Court struck down most of Law 1288 (Congreso de Colombia, 2009) on procedural grounds. In ruling C-913/10 (Corte Constitucional de Colombia, 2010), the court decided that Law 1288 of 2009 should have been passed as a statutory law instead of an ordinary law due to its impact on fundamental rights. Because of this and the minimal role that Congress had, vertical accountability is classified as low.

4.2.2 Horizontal Accountability

Under President Uribe, the judiciary asserted significant oversight over intelligence activities. For example, during the declaration of internal commotion in 2002, the Court reviewed the emergency decrees that increased the powers of the military and the intelligence agencies. In ruling C-1024/02 (Corte Constitucional de Colombia, 2002), it was declared by the Court that some provisions allowing warrantless detentions and searches in rehabilitation zones were disproportionate and interfered with constitutional rights. By annulling those powers, the Court ensured that intelligence operations, even in times of security crisis, must be subject to due process and judicial oversight (Constitución Política, 1991, art. 28-29). The Court's doctrine mainly emphasized the principles of legality, proportionality, and necessity, limiting exceptional measures used for intelligence operations.

In later rulings, such as C-491/07, the Constitutional Court reinforced that even confidential intelligence funds must be subjected to legal controls and transparency requirements, showcasing that state secrecy could not overrule constitutional accountability

(Corte Constitucional de Colombia, 2007). Similarly, the Constitutional Court reiterated in C-728/09 that classified intelligence cannot infringe Procedural rights and that limitations to public access to such information must meet strict proportionality requirements (Corte Constitucional de Colombia, 2009).

In 2005, Colombia's Attorney General opened major investigations into DAS Director Jorge Noguera for allegedly working together with paramilitary groups and giving them intelligence. Noguera was arrested and indicted while Uribe was still the President, representing the strong independence of the prosecutors (Boraz, 2007, p. 5). Similarly, starting in 2009, the Attorney General began investigations into illegal DAS surveillances against political opponents and judges. The Attorney General's Office uncovered internal DAS documents describing intercepts and wiretaps without court authorization, thereby infringing Colombia's legal framework regulating surveillance (Washington Office on Latin America, 2010, p. 5). Under the authority of Law 734 of 2002 (Congreso de Colombia, 2002, arts. 3 & 7), the Inspector General exercised disciplinary control over public officials. Acting against and sanctioning the DAS leaders for their misconduct, the sanctions included dismissal and a prohibition from holding public office. By 2010, several other executives at DAS had also been disciplined by the Inspector General, including Noguera, for violating their duties. These measures upheld horizontal accountability, ensuring that the intelligence institutions maintained their administrative responsibilities.

Law 1288 of 2009 (Congreso de Colombia, 2009, art. 7) officially formalized the JIC, which Uribe had set up prior to this law informally (Boraz, 2007, p. 5). This body was tasked with coordinating intelligence policy to ensure that it was consistent with the objectives of national security. The JIC was chaired by the Minister of Defense and consisted of the directors-general of the respective military, police, and civilian intelligence services. Although it was more of a coordination forum than an oversight institution, the JIC did, however, have

some limited internal oversight functions, such as reviewing inter-agency priorities and issuing a national intelligence plan (Congreso de Colombia, 2009, arts. 7-8). While it did institutionalize a foundation for cross-agency internal checks and balances, further bolstering horizontal accountability under President Uribe, it did not have investigative authority. Because of that, horizontal accountability remains classified as moderate.

4.2.3 Rule of Law Compliance

Significant strides were made to increase both horizontal and vertical accountability in the post-2000 era. However, the question remains how this actually affected intelligence agencies and whether it was effective in ensuring they abided by the law during President Uribe's presidency. Intelligence agencies, especially the DAS, often did not act in accordance with the 1991 Constitution (Constitución Política de Colombia, 1991). While some alleged infractions, such as those mentioned earlier, did cause the oversight institutions to act, the sheer number of breaches and their frequency during that period prove that during those years, the intelligence agencies, for the most part, defied constitutional restraints.

Key constitutional protections for the post-1991 legal order were privacy, habeas data, and due process (Constitución Política de Colombia, 1991, arts. 15 & 29). These fundamental rights were reinforced with the ruling C-1042/02 (Corte Constitucional de Colombia, 2002), which denied exceptional powers being granted even in times of a security crisis, as it violated proportionality and legality. This highlights the judiciary's commitment to also enforce these laws and guard these rights, however, at the same time, it also displays the limited preventative capacities of courts and how there were limited sanctions when intelligence agencies acted outside of the legal boundaries.

This era is also known to be very scandal-plagued. The DAS hid weapons, attended meetings with criminals, shared intelligence with drug lords about their enemies, and erased files of criminals (Boraz, 2007, p. 5). However, the illegal surveillance operations by the DAS during Uribe's second term remain the most remarkable example of a breach of fundamental rights. Even though Law 734 of 2002 (Congreso de Colombia, 2002) provides disciplinary frameworks and constitutional protections, DAS still performed illegal surveillance operations without the court's approval (Washington Office on Latin America, 2010, p. 5). The investigations that followed revealed the existence of project files that explicitly named targets within civil society, indicating an institutional drive rather than isolated and rogue behavior (Semana, 2009). Such abuses prove the insufficiency of legal provisions alone, as intelligence officials functioned out of impunity and blatant disregard of the law.

The establishment of Law 1288 of 2009 (Congreso de Colombia, 2009, art. 7) was an overdue attempt to improve the rule of law compliance with oversight mechanisms such as the JIC. However, many of the scandals had already occurred due to its late implementation. This also characterizes intelligence oversight during Uribe's presidency. While courts issued protective rulings and new laws were established, none of the enforcement mechanisms deterred or sanctioned intelligence agencies from acting unlawfully. This highlights the gap between formal legality and operational behavior and exposes formal oversight's limitations when executive dominance and national security are prioritized over legality, which aligns with Farson et al.'s (2008, p. 6) who argue that illegal activities can persist as they hide behind the legal reforms that are established. Therefore, compliance with the rule of law was low under President Uribe.

4.3 The Creation of the DNI (2010-2011)

This section evaluates the transitional period after Uribe's presidency, during which widespread scandals led to far-reaching structural reforms, including the dissolution of DAS and the creation of DNI. This stretch of time explores whether these changes constitute a real step towards gaining genuine democratic intelligence reform. This era lends credence to Farson et al.'s (2008, p. 47) argument that reforms are often scandal-driven instead of strategy-based, highlighting the reactive nature of oversight reforms. While new institutions were established, continued illegal activities showcase the difficulty in closing the gap between law and practice.

4.3.1 Vertical Accountability

Following the end of Uribe's presidency in August 2010, Colombia entered a transitional period in which mechanisms of vertical accountability over the intelligence sector were tested and reshaped. During the Uribe government, formal legislative oversight was fairly absent. The intelligence agencies themselves acted with broad autonomy and limited parliamentary scrutiny, thus enabling systemic abuses. These scandals pressured the state to align intelligence practices with democratic values.

President Juan Manuel Santos, who took office in August 2010, inherited this crisis and proceeded to quickly set the tone for change. Before Santos was sworn in, Congress passed Law 1288 of 2009 to establish a legal statute of intelligence and create a parliamentary commission for oversight. Shortly after Uribe left office, the Constitutional Court struck down most of Law 1288 (Congreso de Colombia, 2009) on procedural grounds. In ruling C-913/10 (Corte Constitucional de Colombia, 2010), the court decided that Law 1288 (Congreso de Colombia, 2002) should have been passed as a statutory law instead of an ordinary law due to

its impact on fundamental rights. This decision invalidated Congress's first serious attempt at creating formal legislative oversight of intelligence agencies.

The ruling created an accountability vacuum. While regular political oversight mechanisms, such as the summoning of officials by legislative committees, still existed, their specializations for intelligence were insufficient. During this period, Congress had a more indirect role, mainly pressuring the executive into action. Congress gave President Santos extraordinary powers to restructure government agencies, including the intelligence sector, in June 2011 under Law 1444 (Congreso de Colombia, 2011, art. 18).

This delegation of power is an act of vertical accountability as Congress acknowledges the pressing need for intelligence reform and authorizes the executive to tear down the system and rebuild it aligned with democratic principles. Because of public pressure and legislative demands, President Santos used these powers to issue Decree 4179 of 2011 to dissolve the DAS and create the DNI (Presidencia de la República de Colombia, 2011). This course of action also aligns with Boraz & Matei's (2007, p. 13) theory that for democratic consolidation, public trust must be built up, starting with the complete dismantlement of the intelligence agency inherited from the previous regime. Overall, vertical accountability had improved and reached a moderate level during this time.

4.3.2 Horizontal Accountability

In the period following Uribe's presidency, horizontal accountability mechanisms played a vital role in dealing with past abuses and were important in setting the conditions for intelligence reform. With the legislative framework remaining uncertain following the ruling C-913/10, it was primarily the judiciary, prosecutorial bodies, and disciplinary authorities who were left to oversee intelligence operations (Corte Constitucional de Colombia, 2010).

Ruling C-913/10 was also one of the most significant checks from the Constitutional Court. The Court did not oppose the contents of Law 1288 of 2009, but as mentioned before, just the way it was passed. In doing so, the court exercised a vital horizontal accountability function in the matter as it ensured that even reforms which aim to improve intelligence oversight must follow due processes. This action strengthened the judiciary's positioning as a defender of civil rights and the rule of law in the intelligence sector (Corte Constitucional de Colombia, 2010).

After a change of president, the horizontal oversight bodies, such as the attorney general and inspector general, also continued to investigate and sanction high-ranking individuals involved in the intelligence scandals under Law 734 of 2002, which granted them these powers (Congreso de Colombia, 2002). This laid a precedent for holding intelligence officers legally accountable regardless of the political context. These prosecutions confirm Andregg & Gill's (2014, p. 490) observation that democratic control requires legal frameworks in which such intelligence agencies can be investigated, marking a crucial step in democratic oversight.

Critically, these actions focused not only on punishing previous wrongdoers but also on instituting forward-looking reforms aimed at preventing instead of reacting. The executive branch also incorporated internal oversight mechanisms within the newly established DNI through Decree 4179 of 2011. One of these mechanisms that was implemented was the creation of an Inspector General within the agency. This was an independent official who had to report to the president directly instead of to the director of the DNI (Presidencia de la República de Colombia, 2011, art. 8). The institutionalization of internal control mechanisms reflects Born & Leigh's (2005,) "best practice" (p. 84) for making intelligence accountable which showcases the significance of these strides. Accordingly, horizontal accountability was high in this transitional phase.

4.3.3 Rule of Law Compliance

The beginning of Santos's presidency, prior to the creation of the DNI, was a crucial moment for Colombia to display its capabilities for restoring rule of law compliance in the intelligence sector. Democratic governance includes that intelligence activities are performed according to a legal framework that protects fundamental rights and ensures accountability (Born & Leigh, 2005, p. 44). Nevertheless, Colombia's intelligence sector still faces legal compliance challenges. Not even the change in political parties or the increase in institutional scrutiny were enough to alter the disregard for constitutional laws and human rights within the DAS. The culture of operating lawlessly under President Uribe was still too ingrained in the agency for it to vanish immediately after his presidency. Reports came out that unauthorized surveillance was still being performed under President Santos. In 2011, cars were assigned to activists through the DAS, in which the Attorney General's Office later found microphones, suggesting the DAS likely planted those on purpose (CEJIL, 2013). This indicates that intelligence agencies continued to act as an "authoritarian enclave" (Andregg & Gill, 2014, p. 494).

The continuation of these illegal activities has two main reasons. The first is ruling C-913/10, in which the Constitutional Court struck down Law 1288 of 2009 (Corte Constitucional de Colombia, 2010). Because of this, DAS operated under outdated decrees instead of a legal modern foundation. The second is that the culture within the DAS was based on secrecy, loyalty, and skepticism regarding oversight, discouraging reform efforts. These initial struggles were to be expected according to Farson et al.'s (2008) book, in which they write, "new laws may provide a veneer of legality and accountability behind which unreconstructed practices continue to the detriment of human rights and freedoms" (p. 6).

While the Attorney General and the Inspector General made enforcement efforts through prosecutions of high-ranking DAS officials, they were insufficient to change the

culture in the short term. The structural barriers in the DAS ensured that rule of law compliance remained limited, which led to the dismantlement of the DAS and the creation of the DNI. This was an acknowledgement that completely starting over was necessary to achieve any significant change in intelligence activities (Presidencia de la República de Colombia, 2011). Thus, the rule of law compliance remained low at this stage.

4.4 Synthesis of the Analysis

This section will synthesize the results and reveal the reactive patterns that emerge as a consequence of democratic consolidation, a pattern Estévez (2014, p. 577) has also observed in other Latin American countries.

Through post-1991, the Uribe period, and the Santos administration, Colombian intelligence oversight has gone down reactive and non-linear paths. The 1991 Constitution gave Congress powers and created the Constitutional Court, the Inspector General, and the Ombudsman to place limits from a human rights perspective upon intelligence activities. Under Uribe, Law 1288 of 2009 briefly gave Congress an intelligence commission, which the Constitutional Court quickly struck down, while DAS abuses continued despite prosecutions, leaving compliance weak. These abuses, however, led to the passing of Law 1444 of 2011 and Decree 4179, which dissolved the DAS and created the DNI with an Inspector General of its own, paving the way for Law 1621 of 2013 and some intelligence oversight recovery under President Santos. However, these reforms consistently were a response to crises, embedding within them the dynamic of catching up and compromising capacity until the next scandal.

These developments show that intelligence oversight in Colombia has followed particular trends. Vertical accountability declined during Uribe's time, with a partial recovery coming alongside legislative backing of the reform. Horizontal accountability was moderate

but became more institutionalized after the scandals. Rule of law compliance suffered at the peak of illegal intelligence practices, but slightly improved prior to the birth of the DNI. Democratic consolidation has certainly fostered progress, yet these reforms were reactive and nonlinear, showcasing the fragility of proactive reform.

5. Conclusion and Reflection

This thesis set out to answer the question: “*How has democratic consolidation in Colombia, since the 1991 Constitution until the creation of the DNI, affected formal intelligence oversight in Colombia?*” The analysis finds that democratic consolidation significantly influenced the development of formal oversight mechanisms within the intelligence sector in Colombia, but in a non-linear and reactive manner. Several institutional and legal reforms were, over time, introduced. However, in practice, the effectiveness was limited due to entrenched secrecy, executive dominance, and repeated scandals exposing the fragility of democratic oversight.

This research shows that intelligence oversight evolved through three dimensions: vertical accountability, horizontal accountability, and compliance with the rule of law. With the 1991 Constitution, Congress gained political powers over the activities of the intelligence agencies, while the judiciary, especially the Constitutional Court, became a key actor for the supervision of intelligence legislation and the protection of fundamental rights. Despite these institutional improvements, most changes came out of the 2000s DAS scandals that involved illegal monitoring and other lawless behavior. This eventually led to the DAS's dissolution and the civilian-led DNI's establishment in 2011, highlighting a formal distance from prior undemocratic operations. This thesis also indicates that the reforms were slow and lightly put into practice without any real enforcement, as the institutions responsible for overseeing intelligence agencies had very little authority over them due to significant opposition from the intelligence community.

A strength of this paper is its utilization of a rich empirical dataset consisting of court rulings and laws, accompanied by official documents presenting a chronological timeline of the evolution of oversight. Adapting Bühlmann et al.'s (2012) democracy matrix and then applying it within the intelligence context allowed for clear results regarding the extent to

which intelligence oversight mechanisms have democratized oversight through a structured analytical framework.

However, some limitations remain. Because the study used a single-case study approach, it limits generalizability to other cases. Additionally, the reliability of publicly available sources instead of classified documents prevents further insights into covert operations and informal networks. Similarly, the absence of interviews suggests this study might lack diverse insights into how intelligence agencies complied with the rule of law, as many cases will have gone unreported due to secrecy. Lastly, minor errors due to misinterpretations might exist. Some mistakes were identified through extra research, such as the wrong translation of the Attorney General and Inspector General (both were first translated into Attorney General). However, there is still a risk that some translation errors slipped through.

To build further on this research, future studies should emphasize sources that are not publicly available, such as interviews with former Colombian intelligence officials or other political figures who could offer more detailed insight into the events and scandals that took place. Additionally, examining the period after 2011 could further the understanding of how democratic consolidation has influenced intelligence agencies in Colombia, as major formal changes occurred through Law 1621 of 2013. To increase the generalizability of the impact of democratic consolidation, a cross-comparative analysis could be deployed instead of a single case study approach.

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