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## The dismissal of Bogota's Mayor: a challenge for Colombian institutions in the midst of the peace talks

2014 begins with a challenging political and social situation for Colombia's capital city. On December 9 of 2013, as a result of a disciplinary proceeding that lasted one year, Colombian Inspector General<sup>1</sup>, Alejandro Ordóñez, announced a controversial [decision](#): to dismiss Bogota's Mayor, Gustavo Petro, and disqualify him to perform public functions for 15 years.

The opponents and supporters of Mr. Ordóñez's decision are [divided](#) in the evaluation of its legality and legitimacy. This division was clear in the different national and international legal actions filed against and in favor of the decision. Furthermore, several demonstrations have taken place in the city, increasing the complexity of the dispute.

The sanction imposed by the Inspector General and the legal redresses that followed raised profound discussions. Among others, the debates have focused on the [powers](#) of the Inspector General over democratically [elected](#) public servants, the [duties](#) of the latter, the influence of the [Inter-American Court of Human Rights](#)' jurisprudence in national decisions and

possible effects of popular [manifestations](#) on judicial rulings.

In addition, the background of Bogota's Mayor makes the scenario more complicated: Petro previously belonged to the M-19, a former Colombian guerrilla group that demobilized in 1990. Thus, the debate has also focused on whether his dismissal affects the current Colombian [peace process](#) with the Farc guerrilla.

Ultimately, the case invites Colombian institutions to redefine –with or (preferably) without the intervention of the Inter-American human rights system– the delicate balance of powers within the parameters of democracy, the rule of law and fundamental rights. This trinity is legitimized only as a whole and beyond temporarily ideological interferences and interests.



Colombian Courthouse. A phrase of Francisco de Paula Santander is engraved on its entrance: "Colombians, arms have given you independence, laws will give you freedom".

The controversy has also been the thermometer and [preamble](#) of the upcoming electoral debates for Colombian Congress and Presidency. In this scenario, Colombian institutions, Bogota's citizens and, if ap-

<sup>1</sup> The Inspector General's Office in Colombia is an independent supervisory body that, together with the Office of the Ombudsman, integrates the Public Ministry. Both of them are responsible of protecting and promoting human rights and the public interest, and of monitoring the official conduct of public servants.



plicable, the Inter-American human rights system, will play a relevant role for the outcome of the cited process in the upcoming months.

### **Opposing positions: the origin and evolution of the proceedings against Petro**

In December 2011, the Colombian Constitutional Court [invalidated](#) a bid that intended to assign a public contract for the collection, management and disposal of garbage in Bogota. The Court asserted that the annulled proposal was not able to ensure access to trash recycling entrepreneurs to this market. The failed bid was an initiative of Bogota's former Mayor, [Samuel Moreno](#), who in 2011 was also [sanctioned](#) by the Inspector General with a suspension and disqualification to perform public functions of 12 months, in a process regarding administrative irregularities and corruption in strategic public works for the city.

Nevertheless, Bogota still needed to implement a trash disposal system. Therefore, in December 2012 Gustavo Petro took a controversial decision concerning the failed proposal: to implement a program called Zero Waste (*Basura Cero*). This project had three main [objectives](#): to include recycling associations as shareholders in the model of management and disposal of garbage in Bogota, to increase the recycling level in the capital, and to extend the district's control over the garbage recollection's service.

Both national and local institutions, such as [Bogota's Accountability Office](#), the Superintendence of Industry and Commerce, the [Superintendence of Public Services](#), and the Ministry of Environment, along with a broad sector of the city inhabitants, [pronounced](#) themselves against the decision of the Mayor.

Overall, the opponents argued against the Mayor's program that it was highly improvised, violated [an-](#)

[titrust laws](#) and could generate risks for the environment and health of the citizens. In spite of these criticisms, the Mayor proceeded with his program. After more than a hundred complaints against Petro for implementing the controversial scheme –one by the Colombian [Ombudsman](#)–, the Inspector initiated [disciplinary proceedings](#) against him.

After following the process prescribed by law for such cases, the Inspector General [concluded](#) that the Mayor's project caused, among others, crisis and chaos in December 2012, and a malfunctioning provision of sanitation services until July 2013.



Gustavo Petro was sworn in as Mayor of Bogotá on January 1<sup>st</sup>, 2012.

Photo: @ petrogustavo

Additionally, as it was [asserted](#) by the Inspector, the Mayor assigned the provision of collection services to two District's companies that had no experience, knowledge or ability whatsoever in this field. Also, according to the [ruling](#) of the Inspector, the Mayor imposed restrictions and limitations that prevented other companies to compete for the provision of the cleaning service.

This was not the [first](#) Inspector's sanction against a democratically elected official. In fact, as the newspaper [El Colombiano](#) confirmed, just in 2012 the Inspector General imposed sanctions on 258 mayors, nine governors and five senators, all elected democratically.

Still, after the Inspector's ruling, several voices raised to support

Petro through unprecedented demonstrations in Bogota, showing that a sector of the citizens rejected the Inspector's verdict.

While there were people who recognized [mismanagement](#) by the Mayor, many opinion-makers and a significant percentage of citizens considered that the penalty was disproportionate (compared to cases like the one of Samuel Moreno), that it exceeded the attributions of the Inspector General, violated the American Convention on Human Rights and seemed part of a political persecution.



Alejandro Ordóñez Maldonado, Colombian Inspector General since 2009.

Photo: Colombian Office of the Inspector General

### **The legal and political battle after Petro's dismissal**

The *Petro vs. Ordóñez* debate caused several legal and political rounds. First, parallel to the filing of an administrative [remedy](#) to revert the sanction, as well as a challenge against the Inspector General to prevent him from resolving the plea, the Mayor [called upon](#) Bogota's citizens to demonstrate against the decision, claiming that it was undemocratic.

[Article 323](#) of the Colombian Constitution, in conjunction with [Article 44](#) of the Decree 1421 of 1993, empowers the President to dismiss the mayor at the request of the Inspector General. Thus, Petro declared that Colombia's President, [Juan Manuel Santos](#), had the last word regarding the ruling's effectiveness. Nevertheless, President Santos [stressed](#) that he was not going to take sides in the discus-

sion, and that he respected any decision made by the Inter-American Human Rights System organs.

In accordance with the aforementioned Article 323, if the President sanctions the Inspector General's decision to dismiss Bogota's Mayor, there would be two possible outcomes concerning who will replace Petro. On the one hand, if more than 18 months remained of the Mayor's term, the President would call for elections. If, on the contrary, less than 18 months of his term remained, the President would appoint the new Mayor from Petro's political party, the Progressive Movement ([Movimiento Progresistas](#)).

Simultaneously, the Colombian National Civil Registry Office [endorsed](#) a request promoted by the Conservative Congressman Miguel Gómez long [before](#) the Inspector's ruling, to convene a referendum to revoke Petro's mandate. For the approval of this demand, Gómez presented more than 280.000 citizen signatures. The promoters of the initiative argue that Petro's administration had failed.

It is interesting to note that, even though the Mayor initially [opposed](#) this referendum on his mandate, following the demonstrations of thousands of people in his favor, he and his supporters now acknowledge these proceedings as an expression of democracy. In this scenario, in April 2014 Bogota's inhabitants will endorse or revoke the Mayor's mandate.

In January 2014, while the Inspector refused Petro's challenge against his decision and [confirmed](#) the sanction, Bogota's citizens filed more than [800](#) legal actions to protect fundamental rights that they considered were violated by virtue of the Inspector's ruling. However, the result of the legal claims has raised more questions than an-

swers, since their outcomes have differed.

For instance, while a judge of the Administrative Tribunal of Cundinamarca [suspended](#) the legal effects of the Inspector's resolution until a final decision about the ruling was issued, another statement from several judges of the same court [dismissed](#) the claims of the applicants.



Bogotá's Plaza de Bolívar located in the city center, where demonstrations in support of the Mayor are held.

Photo: @hekatombe

Meanwhile, in a different [decision](#), the Third Chamber of the Administrative Tribunal of Cundinamarca accepted the claim of a citizen who argued that her right to exercise political control over the Mayor's administration was prevented through the disciplinary ruling of the Inspector General. Therefore, the judgment suspended the legal effects of the sanction against Petro, until the referendum on revocation would have taken place.

There are more than 30 additional legal actions against Petro's dismissal just in the Administrative Tribunal of Cundinamarca. However, after an assembly of the Tribunal's Board, the judges [rejected](#) a request of the Inspector to accumulate all the claims. This decision will not only increase the time it will take to issue all the judgments, but also the risk of dissenting rulings.

In this scenario, the Colombian State Council<sup>2</sup> –as the appeals court of the Administrative Tribunal of Cundinamarca– and the Constitutional Court –in its function of reviewing the judicial decisions regarding human rights protection– will have the final say in these national proceedings. From a perspective of legal certainty, it would be appropriate that both courts ruled in the same direction.

Additionally, Bogotá's Mayor [requested](#) provisional measures before the Inter-American Commission on Human Rights. As a result, the international organ required information from both the Colombia [State](#) and [Petro](#), on the development of the national proceedings. This request has opened the discussion on whether, according to the American Convention on Human Rights and the pronouncements of the Inter-American Court of Human Rights, the Inspector General may dismiss and disqualify a popularly elected civil servant, and the conditions to do so.

### **The role of the judicial system, the Inter-American Human Rights System and civil society in the Petro case**

In the described scenario, the future of the Mayor, the Mayor's Office and the city is unclear. Still, there is certainty about one fact: the judicial system, civil society participation and the Inter-American Human Rights System will be decisive for the outcome of this process and the strengthening of the Colombian institutions in a context that threatens to discredit them.

On one hand, the State Council and the Constitutional Court will play a key role, as appeal and revisionary chambers, respectively, of the judgments regarding Petro's

<sup>2</sup> The State Council is the supreme administrative law judiciary body in Colombia.

dismissal. Particularly, their decisions about the case can be an opportunity to show the strength and independence of the Colombian judiciary, as well as to harmonize the Constitution with the jurisprudence of the Inter-American Court of Human Rights on this issue.

Indeed, as it was mentioned above, [debates](#) concerning the competence of the Inspector General to disqualify elected officials from performing public functions have arisen in Colombia. The Colombian Constitutional Court has previously ruled on this particular issue. For instance, in the judgment [C-028/06](#) the Court reviewed the constitutionality of disciplinary sanctions involving the disqualification to perform public functions. In the cited ruling, the Court stated: "[T]he Inspector General's power to impose disciplinary sanctions involving restrictions of the right of access to public functions, is not opposed to constitutional Article 93 nor Article 23 of the American Convention on Human Rights".

On the contrary, some organizations such as [Dejusticia](#) consider that, under article 23 of the American Convention, political rights can be limited only by court convictions in criminal proceedings. Thus, they suggest a change of the Constitutional Court's case law, or the requirement that the disciplinary process complies with the safeguards of criminal proceedings, if such sanctions are going to be imposed.

This legal perspective should also be assessed together with several political dimensions. On one hand, the debates regarding the powers of the Inspector General gains complexity due to the importance that this disciplinary agency has acquired in the fight against corruption, where judiciaries have proven to be slow and inefficient.

The Organization of American States support the creation of simi-

lar disciplinary agencies to fight against corruption, but cases such as the one of Bogota's mayor, reveal serious tensions with the democratic principle. As a result, decisions that correspond to democratic exercises –i.e. to vote in favor or against a Mayor's mismanagement–, moves to an administrative level that are not subject to electoral control whatsoever.

On the other hand, this case can also be an interesting precedent in terms of civil society participation for the current peace process in Colombia. The peace talks' [agenda](#) provides for a formal approval of the agreements by Colombian citizens. Thus, the implementation of a mechanism for citizen participation in the nation's capital on the recall of a mayor who belonged to a guerrilla group, may be a chance to increase the education upon civil society participation processes in Colombia. Also, it might be a previous experiment that can provide valuable lessons for the counter-signature of the peace agreements.

Furthermore, it may also be an opportunity for Colombian citizens to express their opinion towards the Mayor's administration in a formal mechanism, after the various demonstrations that have taken place since the Inspector's ruling.

Moreover, due to the fact that Gustavo Petro symbolizes the participation of former combatants in politics, some analysts [claim](#) that the case might influence the peace talks taking place in Havana, and even create distrust in the delegation of the FARC guerrilla.

As it can be noticed, the dismissal of the Mayor of Bogota has caused uncertainty. Yet, it can also be an opportunity to strengthen civil society participation, Colombian institutions and the judicial system in Colombia. The judiciary may not be democratically elected and supervised, but it is called upon to protect and guarantee the citizens' po-



litical rights. The Colombian citizens have, similarly to other countries, discovered their leverage when expressing political will.

react to legitimate citizens' demands.

To achieve a constructive outcome of this process, it will be vital that political actors demonstrate their ability to perceive and adequately



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