

International Pre-Electoral Observation Mission-Colombia

February 3–15, 2010

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The International Pre-Electoral Observation Mission visited Colombia in the month of February, carrying out observation in four departments—Córdoba, Valle del Cauca, Antioquia and Santander—as well as the capital city of Bogotá. The regional observation teams were made up of professionals from different countries, organizations and disciplines, to assure a broad and multi-faceted perspective on the specific conditions we encountered in the areas we visited.

Our methodology for observation was designed to be as broad and inclusive as possible. We met with leaders of all major political parties (Partido Conservador, Partido Liberal, Polo Democrático, Partido de la U, Partido de Integración Nacional – PIN, Partido Verde, Partido MIRA, etc.); representatives of civil society organizations; local, state and national government officials (governors, mayors, Secretaries of Government, Councilmembers, etc.); electoral authorities (National Electoral Council, Registrars); officials charged with electoral oversight (Attorney Generals, Prosecutors, Public Defenders, General Controllers, Civic Affairs-*Personería*) on municipal and departmental levels; journalists and members of the media. We also sought out direct contact with citizens organized through the church, civic groups, unions, indigenous and Afro-Colombian groups, the LGBT community, displaced persons, feminists and others.

The purpose of the Pre-Electoral Observation was to gather information regarding the conditions surrounding the March 14 Congressional elections, also relevant to the May presidential elections in Colombia. International standards stipulate that valid electoral observation cannot take place without a study of pre-electoral conditions, as these constitute the often invisible but determinant backdrop to voting on Election Day. In a situation of internal conflict, the presence of illegal armed groups, widespread violence and violation of human rights and internal displacement, this is especially critical.

In this sense, Colombia's history is also pertinent, as a nation that has suffered and continues to suffer violent conflict. The partisan violence between Liberals and Conservatives of the forties and fifties ended long ago, however there are more recent serious forms of violence that permeate Colombian society and restrict the free exercise of the vote between real electoral alternatives. The destruction of the Patriotic Union—a leftwing party launched by the FARC and the Communist Party in the eighties during a peace process, was achieved at the cost of some 3,000 members and leaders murdered, including two presidential candidates. This historic fact has affected the prospects of participation from the left to this day.

The FARC has attempted to control election results through the assassination of mayors, governors and candidates in many parts of the country. Drug traffickers launched a war against the State and against grassroots movements in the eighties and

early nineties. Today they continue to threaten the peace and democracy in various regions of the country.

We are convinced that the exercise of democracy cannot be understood as an isolated event on the day of voting. It includes a multitude of factors that run from daily participation in decision-making by a free and informed citizenry, to defense of national sovereignty at the geopolitical level. For this reason, we strongly believe that an in-depth analysis of the social and political conditions in the country is indispensable, since these constitute the often invisible but crucial backdrop to the electoral process. This pre-electoral observation is an important contribution to that effort.

POLITICAL AND SOCIAL CONTEXT

Our investigation prior to the arrival of the International Pre-Electoral Observation Mission in Colombia and the Observation itself revealed a panorama marked by the following major traits: 1) defects in the application of electoral reforms and laws, 2) the scandal surrounding the pacts between politicians and paramilitary groups (parapolítica) currently under investigation and prosecution, 3) the impact of internal displacement—past, present and future, and 4) the context of the violation of human rights and violence in the country. The following sections explain each of these in greater detail.

1) Electoral Reforms and Implementation

Colombia's electoral reforms provided new mechanisms of transparency and equity to the process, however they have led to some uncertainty and ambiguity in implementation. Colombia has enacted several reforms to their electoral legislation since the Constitution of 1991.¹ Some of the most significant are Legislative Act 01 de 2003, the Law of Guarantees (Ley de Garantías) of 2005 and Legislative Act 01 de 2009.

The 2003 reform brought in changes to the electoral process, as well as measures to strengthen the political party system. The changes include a new method for determining public financing for political parties; a prohibition against membership in more than one party; a minimum number of votes required to maintain legal party status; the enactment of a caucus system (*sistema bancada*); and the establishment of a single slate (*lista única*) of candidates from each political party for elections.

These reforms were made to correct some of the problems that had arisen from the 1991 Constitution, one of which was the large number of parties that came into existence (72 parties in 2003). Rather than representing diversity, the plethora of parties was judged to have a negative effect on Colombian democracy with many of the new parties seen as merely short-term electoral projects of a specific individual. Too

¹ For a full list of Colombian electoral law see:
http://www.moe.org.co/webmoe/index.php?option=com_content&view=article&id=149&Itemid=152

many competing forces made the congress unwieldy and accountability much more difficult.

In 2005, the Law of Electoral Guarantees (Law 996 of 2005) was developed in response to the constitutional change that allowed for presidential re-election for the first time (Legislative Act 02 of 2004). Recognizing the potential advantage that a current President or Vice-President may have over other candidates; the Law of Guarantees seeks to insure fair competition between all presidential candidates. To that end, the law prohibits the current President or Vice-President from using their elected position to campaign if they are running for a second term and regulates equal opportunities for publicity. It also prevents public sector workers from participating in electoral campaigns and prohibits the awarding of government contracts in the six months leading up to the election.

During the period of the observation, the possibility of a re-election bid by President Alvaro Uribe Velez and uncertainty regarding his candidacy—now discarded by a Constitutional Court decision—created ambiguity in the application of the Law of Guarantees since the president was a possible but not declared candidate. The Mission lauds the decision of the Constitutional Court to prohibit a last-minute candidacy, as it gives greater institutionality to the electoral process and both demonstrates and reinforces the essential balance of power between the three branches of government.

The Law of Guarantees also prohibits a member of an illegal armed group from participating directly in elections as a candidate or in support of a candidate, unless they have first reincorporated into civil society.²

Legislative Act 01 de 2009 includes further details on public financing for political parties' electoral campaigns. Importantly, it also clearly details the responsibility of, and sanctions against, a political party that has a candidate or elected representative who is charged with links to illegal armed groups, drug trafficking or crimes against democracy or humanity.³ This last section arose from the “parapolitical” scandal.

Areas that have been identified as still requiring legal electoral reform include the need for mechanisms to guarantee the balance of power between the executive branch of government and other branches and institutions such as the Constitutional Court and the Attorney General. Previously, this was guaranteed by the fact that the president was limited to only one term. The other critical area is the lack of serious sanctions for some cases of electoral fraud, such as vote buying and misuse of voter ID cards.

2) *Parapolítica* and the Influence of Paramilitary Groups and Successor Groups in Elections

²<http://cvisible.uniandes.edu.co/var/rw/CMS/congresodelarepublica/4.%20Reglas%20de%20Juego%20Electoral/Guia%20Pedagogica%20Elecciones%202006.pdf>, February 24, 2010.

³ Acto Legislativo 1 De 2009, Diario Oficial No. 47.410 de 14 de julio de 2009, Departamento Administrativo de la Presidencia de la República.

Outrage over “parapolitics” exploded in Colombia when the ties between paramilitary groups and politicians in Congress and in other public office were revealed, beginning with the declarations of multiple demobilized paramilitaries and the information the Attorney General found in the computer of “Jorge 40” (an alias) about the so-called “Ralito Pact”. With this information, the Supreme Court, the Attorney General of the Nation and the Prosecutor General of the Nation began investigating representatives alleged to be involved at a national and departmental level. The extent of collusion between politicians and armed groups is still not fully known, but it was massive. For example, in the Chivolo Pact in the year 2000 in the department of Magdalena, thirteen candidates for mayor and 395 others, among them members of municipal councils and Departmental Assemblies attended a meeting with paramilitary forces.

Over the past three years, up until today, at least 133 congress members have been investigated for ties with groups on the wrong side of the law. Of these members of Congress, 71 have been called in for questioning, 50 are currently being detained, 42 have [waived their jurisdiction] as member of congress, 18 are in the process of being tried, 13 have pled guilty to the charges and have submitted to the expected sentence, and 7 were found guilty. The majority of the politicians implicated were part of the governing coalition. León Valencia, director of the Corporación Nuevo Arco Iris indicated, “Of the seven parties which comprised a part of the Uribista coalition, five had all their candidates prosecuted for parapolitics. At present, these parties continue to have the ability to influence the political scene from within.” [2]

The Mission noted that the effort is still incomplete and that evidence exists that the presence of paramilitaries in the government not only continues but also can be restored in the present elections with those same politicians who are currently under investigation or sentenced putting up candidates for the most part recruited from their families.

For our pre-election observation work, it was very important to measure the consequences and possible continuation of parapolitics, and thus its impact on the exercise of democracy in the country. The most recent report of the MOE concerning the electoral risks for the congressional elections in 2010, includes a qualitative analysis by the Nuevo Arco Iris organization, which emphasizes the strength of parapolitical structures on a regional as well as a national level. This strength has enabled members of congress – in spite of investigations into their activities or prison sentences for ties with narcomilitary groups – to “maintain influence in their places of origin and to put their machine at the service of their allies, so that their groups and political networks continue to maintain power in the region.” Furthermore the fact that in 2007 the parties with members linked to parapolitics succeeded in gaining governorships (24), mayorships (925), assembly seats (360) and council seats (460) shows that sufficient paramilitary power exists not only to affect the elections in 2010 with illegal funds but also to affect the electoral process from inside the system itself (“the reality in various government offices within the country is that a large number of politicians finance campaigns with money they took from their offices’ budgets.”)

This large number of successful candidates is the result of two phenomena: first an obvious lack of punishment by the voters, whether because of ignorance or indifference,

and second, “you find a large part of the electoral landscape conditioned by the fear that the desire for self-preservation manages to provoke in the population.” In turn, with the political machinery intact, sufficient funds, and an uninformed population, it should not be surprising that congressional representatives who are not formally disqualified, family members of those who are, and others supported by paramilitaries, in all more than 80 candidates, not only are betting on being successful, but also have a strong chance of being elected: thus, the elections of 2010 don’t signify the end of parapolitics, but rather a new beginning.

Furthermore, from the start, the legal process against politicians with ties to paramilitarism has encountered a variety of obstacles, among them threats against and assassination of witnesses, the bugging or interception of communications in an illegal manner by the Administrative Department of Security (DA) against members of the Supreme Court of Justice, and the extraditions of the main paramilitary chiefs to the US, which impedes learning about the ties of politicians to paramilitaries in depth.

Also there exist cases of legal evasion such as the waiver of jurisdiction that covers Senators and Representatives of the Legislature, which results in what they want: an ordinary judge, not the Supreme Court undertaking the investigations. In an opportune fashion, starting on September 15, 2009 the Supreme Court decided to reclaim its authority in the procedures against congress members who had renounced their seats. Numerous cases have been brought back to the Supreme Court, including the procedure against the chief of the Citizen Convergence Party, Luís Alberto Gil.

The report by the José Alvear Retrepo Lawyers Group called “*Obstacles to the Application of Justice*” published in October 2009 addresses the difficulty in arriving at the truth, since many of those who are demobilized, in search of legal benefits give false testimony or are involved in extortion. In addition, they pursue economic ends and political benefits.

The present process of investigations and legal proceedings against those involved in parapolitics represents a very important step forward in the fight against the impunity that has characterized the attitude of the state towards paramilitary activities, even more important when elements of the state such as politicians and the armed forces are involved. However, a multitude of cases exist which demonstrate the impunity with which paramilitary and military groups undertake massacres and crimes. Crimes from years ago still have not been dealt with, including some like Segovia’s on November 11, 1988 [5] and La Rochela’s in 1989 [6], Delays and legal labyrinths have impeded action against politicians and public servants identified as accomplices in the massacres.

In the cases of ‘false positives’ the failure [to prosecute] the actors directly involved as well as the intellectual authors for having subverted the terms established in the penal code have ultimately not only converted [legal efforts] into a legal farce, but also into an apparent strategy of impunity, as seen in the judgment against 10 soldiers for the massacre of eight people in the Community of Apartadó on February 21, 2005 which suffered this fate [7]: after multiple obstacles and years of delay [8], the judgment against the guilty was annulled because of a legal technicality.

The phenomena of parapolitics in Colombia has been presented as the isolated activity of a few “bad apples”, incapable of putting democracy at risk in a structural fashion. Opposed to this interpretation that there are only isolated mafia-like structures is the strength of the cases investigated by the Supreme Court of Justice which provide evidence of the historical relationship between the mafia-like structures and politicians from many regions in consensual and planned alliances.

The ex-Attorney General of the Nation, Mario Iguarán, affirmed that “according to the investigations into Parapolitics [...], it could be confirmed that it was not the paramilitaries who sought out members of the political class in the regions where they had their operations, but very much to the contrary, it was the elites of regional politics who turned to them.” [9] Thanks to investigations by the Supreme Court and monitoring/tracking by the NGO Defenders of Human Rights, the worrisome reach of paramilitarism within political structures in Colombia has been demonstrated. The paramilitary project united with the political class has systematically implemented its plans through pacts realized among the so-called Self-Defense Units of Colombia – AUC and the political leaders of the country, which seek among other objectives “to restore our country” and to make a “new social contract.”[10]

This influence is making itself evident within the new party, PIN (Party of National Integration). Founded at the end of last year, the party hopes it can participate in the new Senate of the Republic with 15% of the seats. PIN is composed of members of the no-longer-existing party, Citizen Convergence, of the [annulled] AND [12], that is, candidates who were no longer endorsed by the party of the U, nor by the Conservative party. Also integrated into the group were families of politicians who were in jail or who were investigated because of ties with the paramilitaries.

The evidence of such ties is not only the result of investigations by the Supreme Court, but also of the declarations of multiple demobilized paramilitaries and the information found about the so-called “Pact of Rialto by the Attorney General in the computer of the pseudonymous “Jorge 40”. With this information, the Supreme Court, the Attorney General of the Nation and the Solicitor General of the Nation began to investigate representatives at a national and departmental level. For example, in the year 2000 in the Pact of Chivolo in the department of Magdalena 13 candidates for the office of mayor and 395 other people, among them members of municipal councils and departmental assemblies attended. That investigations because of paramilitarism exist in 25 of the 32 departments of Colombia shows the great incidence of the phenomenon in politics and in the administration. As a result, fear continues to exist in civil society including among members of public entities with whom the Mission team met during their stay in Colombia. This can be seen in the fact on various occasions, functionaries of entities like Defense of the Pueblo, the Solicitor General of the Republic, local legal representatives and others of similar capacity, preferred to talk unofficially about the situation of armed conflict in the regions, the presence of illegal armed groups, and violation of human rights, since they consider it difficult to maintain their professional opinion about these matters within the institutional framework in which they work.

3) The Impact of Internal Displacement on the Electoral Process

Internal displacement remains a major obstacle for many Colombians to participate in a free, informed and transparent manner in the country's elections. Of special concern is that displacement and its negative impact on democratic participation particularly affects sectors already disadvantaged-- Afrodescendant, indigenous, poor rural farmers and women heads of households. According to the Consultancy for Human Rights and Displacement (CODHES), in 2009 over 280,000 Colombians became newly internally displaced due to the internal armed conflict and violence. These people joined over three million persons already internally displaced in the country. This represents a significant number of Colombians, perhaps 8% of the population, in a situation of great vulnerability to harm, coercion, recruitment and extreme poverty. Areas most affected by new displacement in 2009 include the four departments visited by the International Mission: Antioquia, Valle del Cauca, Santander and Cordoba.

While Colombia contains the most comprehensive normative framework for addressing internally displaced persons (IDPs) in the world, the full scope of the rights enshrined in these norms are far from being applied. This led Colombia's Constitutional Court to pronounce that in April 2004 that the situation of protection of the rights of internally displaced persons in the country was unconstitutional due the lack of guarantees for a wide range of rights, from basic human rights like the right to life, to political, economic and cultural rights. Since then, the Court has ordered the government to implement a series of measures to rectify this situation. In January 2009, the Court issued orders 004 and 005 specific to the grave situation faced by Afro-Colombian and indigenous IDPs.

Although the government has taken steps to bring its response in line with Court orders, most internally displaced continue to suffer from serious abuses of their rights, insecurity and lack of socio-economic stability to bring them out of a state of displacement. Also many IDPs remain unable to return to their territories of origin due to the ongoing internal armed conflict and activities of the FARC, paramilitaries and military, presence of landmines, and usurpation of their lands by economic interests. Internal displacement affects most of Colombian municipalities and is a major humanitarian challenge throughout the country.

Internal displacement is not just a grave humanitarian and security problem; it also leads to a stunting of civil, political and cultural rights. Persons who become displaced often lose their identity documents, which are vital to their ability to register to vote and gain access to much needed public services in the areas of refuge. In Colombia, a lack of documents can also lead to grave security threats and suspicion from illegal armed groups. Many women, especially rural poor women who relied on their husbands for services requiring documentation, are left widowed or separated from their partners without documents.

The Mission found that the government did not take sufficient measures to compensate for the obstacles to civic participation faced by IDPs. We were repeatedly informed that the two-week period allowed for IDPs to register to vote in the upcoming elections was far too short. Groups of IDPs we met with proposed three specific measures to rectify

this situation: 1) IDPs should be authorized to vote in their place of expulsion, 2) authorities should waive the requirement for IDPs to show residency in the place they vote, and 3) Afro-Colombian and indigenous IDPs should be granted a special exemption for voting.

Given the continued armed conflict throughout Colombia and a rate of internal displacement that is not abating, the challenge of fully integrating IDPs into democratic processes is critical to free and fair elections. However, we note that the only real path to guaranteeing full democratic rights to all citizens is to halt the political and economic forces that are continuing to cause internal displacement.

4) The Context of Violation of Human Rights and Fundamental Liberties

“(...) The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his or her civil and political rights, as well as economic, social and cultural rights”. ICPCR

Colombia has long been recognized as the oldest democracy in Latin America. Its Constitution and normative framework in relation to human rights and fundamental liberties is very comprehensive. In 1991, the nation incorporated recognition of its differences and ethnic and cultural pluralism in the new National Constitution (Art. 7). Government and civil society reaffirmed their commitment to democracy defining important mechanisms of citizen participation, control and monitoring and legislation specifically aimed at protecting the rights of the indigenous and Afro-Colombian populations.⁴

Art. 258 recognizes the [sovereignty of the people] to choose freely their representatives in government, reflecting the right of civil society to participate in the political life of the country.

Despite efforts in the country to establish a system of government that assures respect for human rights, norms and the development of democratic institutions, our Mission found that persistent factors of violence, discrimination in all forms, structural racism, exclusion, segregation and poverty make civil society vulnerable to acts that weaken the exercise of their rights and freedoms. During the electoral process, these factors—compounded by corruption and impunity—lead to a fertile environment for manipulation, coercion of the vote to promote economic and political interests. They also lead to the obstruction of transparent citizen participation and the full exercise of citizenry. Likewise, we heard serious criticisms of some programs and legal mechanisms that

⁴ Para el caso Indígena hay diferentes Sentencias de la Corte Constitucional que reconocen derechos políticos, territoriales y culturales, entre ellas la Sentencias C-139 de 1996 y T-652 de 1998 que reconoce el derecho a determinar sus propias instituciones políticas. Para el caso de los Afrodescendientes esta la Ley 70 de 1993, como marco legal comprensivo. Sin embargo, esta ley no está desarrollada en su totalidad. Capítulos relacionados con el desarrollo y administración territorial se encuentran aun sin reglamentar.

form part of the democratic security policies, which in some cases propitiate the violation of rights and liberties.

Criteria of Freedom and Equity in the framework of Rights: The Effects of the Internal Armed Conflict

Colombian society has been characterized in the past decade for grave violation of human rights. Among them are: forced internal displacement, expropriation of territory, selective assassinations and massacres concentrated in the lands and communities of indigenous peoples and Afro-descendants; obligatory involvement of women and children in the war; acts of social, racial and gender intolerance; and cruel and degrading acts against the LGBT community. Other well-documented practices include attitudes of intolerance on the part of the government and armed groups toward expressions of ideological and political opposition; the lack of labor guarantees and violence against trade unions; economic and legislative policies voted in an atmosphere of corruption and coercion; abuses of power by the State and Armed Forces, as in the cases of the 'false positives' and the illegal tapping of phone lines by the intelligence agency; government programs that involve the public directly in the armed conflict, such as the informer programs; links between government representatives and illegal armed groups; death threats and impunity. These practices create fear and social paralysis among the population, and are manifestations of the weaknesses of the Colombian state and its institutions to protect them.

International standards for elections⁵ cover three basic rights (Art. 25, CIDCP): 1) the right to take part in government, 2) the right to vote and be elected and, 3) the right to equal access to public services. Based on the information gathered during the pre-electoral observation to several regions, there is a lack of full exercise of these rights due to prevailing violence, poverty, impunity and corruption. This is especially true for vulnerable sectors such as women, youth, and ethnic groups.

Responsibility of the State in Violating Rights and

In recent years regional and international groups have exposed facts that demonstrate a rupture of the rule of law in Colombia and consequently the protection of human rights. Declarations like those of the Constitutional Court (Sentencia T-025 del 6 de Feb. 2004⁶) and the UN Human Rights Council (Dec. 2008)⁷ point to the need for the Colombian state to be more effective in guaranteeing democracy in legal and social terms.

Groups interviewed reported that the democratic security policies of the Uribe government have involved the public and especially children and youth as informants

⁵ UNCHR, Training Manual. "UN Human Rights and Standards regarding Elections in general". Num. II-A. Pag. 4
<http://www.ohchr.org/Documents/Publications/training2en.pdf>

⁶ Ver, <http://www.acnur.org/biblioteca/pdf/2522.pdf>

⁷ Ver, http://www.upr-info.org/IMG/pdf/Recommendations_Colombia_2008.pdf

for state intelligence, jeopardizing their safety and violating their rights.⁸ With a poverty rate of 13.6% in 2009 and high levels of extreme poverty among the internally displaced population, initiatives like the informants one stimulate dangerous involvement in the war economy. It was also reported that counterterrorism and counternarcotics measures have also led to violations of human rights and risks to the public from aerial fumigations, bombings and armed confrontations.

Discrimination

Accounts of racial and gender discrimination came from many sectors and pose serious obstacles to electoral participation. Of particular concern are the conditions of marginality and exclusion faced by internally displaced indigenous peoples and Afro-Colombians, and the Lesbian, gay, bisexual, transvestite and transsexual community (LGBT).

During the UN evaluation of Dec. 2008, the Colombian government made various commitments to guarantee the promotion and protection of the rights of these groups and assure their inclusion and respect for their rights. However, the intention is less than clear when, for example, on the one hand it promises to promote strategies to prevent forced recruitment and its effects on women and children and on the other, refuses to take into account the recommendations of the UN regarding its own program to recruit the public as informants and to involve children in the "Soldier for a Day" program.⁹ This double standard leaves the impression that the Colombian government does not recognize its responsibility in propitiating conditions that stimulate the violation of human rights and basic liberties. In this sense, although the Constitutional Court declared the equality under the law of same-sex couples, the government and society are far from recognizing and guaranteeing full equality and persecution against these groups continues.

RESULTS OF THE OBSERVATION

III. Risks to the Electoral Process

Section 1: Influence of Armed Groups (Paramilitary and Narco-Traffickers) on the Electoral Process

⁸ UN EPU, Colombia. Lista de recomendaciones contenidas en la sección II del Informe del Grupo de trabajo A/HRC/10/82. Diciembre 10, 2008. Adopción, Marzo 20, 2008. Geneva. http://www.upr-info.org/IMG/pdf/Recommendations_Colombia_2008_S.pdf

R- Párrafo 37 (c) (Eslovenia) "Recomendó que, de conformidad con la recomendación formulada por el Comité de los Derechos del Niño en 2006, se pusiera término a la utilización de niños por las fuerzas de seguridad en la recolección de información de inteligencia y en programas como "Soldados por un día".

R- Párrafo 19 (e). "Suprimir las medidas administrativas que estimulaban la comisión de actos que atentaban contra los derechos humanos, tales como incentivos a los militares según el número de bajas infligidas en combate".

R- Párrafo 19 (d) (Chile) "Suprimir las medidas administrativas que estimulaban la comisión de actos que atentaban contra los derechos humanos, tales como el uso indiscriminado de recompensas a civiles informantes".

⁹ Ver EPU, Recomendaciones.

The influence of narco-traffickers and armed actors on the electoral process in certain parts of Colombia is, by all indications, significant and alarming. Their forceful interventions are directly related to their ultimate objective of becoming the de facto political authority in various parts of the country. It is certain, in places where these groups have been active or allowed to operate with impunity, that the legitimacy of both the electoral process and the candidates elected during those campaigns have not, and will not, be trusted by the people. These issues and other high profile scandals further erode the people's sense that the government and its representatives exist to serve them and address their needs.¹⁰

According to community leaders and organizations based in various parts of the country, the government bears a large portion of the responsibility for the recent expansion of armed banditry and predation that is evident in all areas of social life including electoral politics. Despite demobilization initiatives that, ostensibly, provided pathways to civilian life for armed actors, many still remained actively engaged in illegal activities. Communities throughout Colombia, noted that the government's strategy provided few mechanisms for demobilized paramilitaries to support or sustain themselves through legal employment and, thereby, ensured that some would return to criminal life.¹¹

Some respondents, echoing information contained in human rights reports, have described ongoing predation by narco-traffickers and armed actors, particularly in areas where the most vulnerable populations are found. Various criminal groups including Los Rastrojos, The Black Eagles, and other loosely structured remnants of demobilized paramilitaries, have been cited by numerous internal and international organizations for the violence and other forms of intimidation they inflict upon vulnerable communities. These groups have emerged as prominent and visible barriers to full participation in the electoral process for many communities throughout the country.¹²

An investigative report by Adrian Anselma stated: "the violence is most serious in the west of the country in Nariño, Valle del Cauca, Cauca, all three departments in the

¹⁰ See Cívico, Aldo. Falso Positivos son Gran Problema en Washington. Entrevista Con el Representante Demócrata Jim McGovern. El Espectador. 30 Enero 2010.

<http://www.elespectador.com/impreso/internacional/articuloimpreso184974-falsos-positivos-son-gran-problema-washington>

¹¹ Alsema, Adriaan. FARC is on the Rebound. Colombia Reports.com. 26 November 2009. <http://colombiareports.com/colombia-news/news/7058-farc-is-on-the-rebound-study.html>

¹² McDougall, Gay. Statement by the United Nations Independent Expert on minority issues, Ms Gay McDougall, on the conclusion of her official visit to Colombia, 1 to 12 February 2010. Office of the United Nations High Commissioner for Human Rights. Geneva. 2010. See also Bravo, Alfredo Molano. Denuncian Control de Paramilitares al Comercio en Chocó. El Espectador.com. 18 Enero 2010. <http://www.elespectador.com/impreso/articuloimpreso183645-quien-mato-argenito>

south west of the country, and the Chocó department along the Pacific coast, where the FARC is not just involved in combat with the army, but also with the ELN and paramilitary drug gang Los Rastrojos.”¹³

According to interviewees, there are multiple groups of armed actors including the paramilitary group known as the Águilas Negras (Black Eagles), but community residents don't spend time trying to differentiate between the perpetrators. They report greater concerns about the relationship between these groups and public institutions and their penetration into almost all areas of commerce. (*Anonymous interview)

The penetration of criminal groups into electoral politics at the local level can be seen in the ongoing para-politics scandal that reaches into the highest levels of the Colombian government and threatens to end the careers of scores of congressional representatives and other government officials.¹⁴ Evidence from numerous sources indicates narco-traffickers and armed actors in an around Buenaventura are heavily involved with all aspects of electoral politics including handing out gifts and bribing and intimidating candidates and the electorate, monitoring polling places to ensure compliance with their directives, and directly interfering with poll workers and ballots after the voting process has ended.

They reportedly interfere in the electoral process to support allied candidates, or to ensure they will have access to likely or possible winners. These tactics have been seen in past electoral campaigns as well.¹⁵ In the words of one resident from Cordoba some elected representatives allow these conditions to continue and can't be trusted to act in the public interest and denounce these irregularities. (*anonymous interview). Therefore, reform actions must extend beyond opposition to narco-traffickers and armed groups and must address the entire system including the ethics of politicians.

¹³ Alsema, Adriaan. FARC is on the Rebound. Colombia Reports.com. 26 November 2009. <http://colombiareports.com/colombia-news/news/7058-farc-is-on-the-rebound-study.html>

¹⁴ See Vieira, Constanza. Colombia: International Criminal Court Scrutinises Paramilitary Crimes. Aug 27, 2008. Inter Press Service News Agency.

<http://ipsnews.net/news.asp?idnews=43696>; and Ex-Paramilitares y Ex-Guerrilleros Hacen Cuentas Con 39,500 Votos. Votebein.com. 19 Enero 2010. http://www.terra.com.co/elecciones_2010/votebien/html/vbn357-ex-paramilitares-y-ex-guerrilleros-hacen-cuentas-con-39500-mil-votos.htm

¹⁵ See del Viso, Nuria. Paramilitary Intimidation in the Colombian Elections. Bulletin Info CIP no. 10 (Elections in Latin America), CIP-FUHEM. Centro de Investigación para la Paz. February 15, 2006; El Alemán Asegura que Edgar Eulises Torres Está Comprando Testigos. El Espectador.com. September 10, 2009. <http://www.elespectador.com/noticias/politica/articulo160618-el-aleman-asegura-edgar-eulises-torres-esta-comprando-testigos>; and

Ex-Paramilitares y Ex-Guerrilleros Hacen Cuentas Con 39,500 Votos. Votebein.com. 19 Enero 2010. http://www.terra.com.co/elecciones_2010/votebien/html/vbn357-ex-paramilitares-y-ex-guerrilleros-hacen-cuentas-con-39500-mil-votos.htm

For these criminal groups participation in, and manipulation of, the electoral process facilitates greater control of the land, public services, and the other mechanisms or resources that are important for the illegal activities that provide their livelihoods. In addition to bribery and other forms of graft, they also engage in various forms of intimidation of the electorate and candidates.

Targeted acts of intimidation against candidates begin once their candidacy shows signs of success and occur within the wider context of the general practices of violence and other forms of intimidation that have been reported by numerous local, national and international human rights groups.¹⁶ (*Anonymous interview, February 8, 2010) Their intimidation encompasses a broad range of direct and indirect acts ranging from more subtle threats or promises involving access to benefits or rewards, to the more direct physical actions that may end in death for those who refuse to cooperate.

SECCION 2: Electoral Fraud and Electoral Crimes

The International Pre-Electoral Observation Delegation of February 2010 received numerous complaints of illegal activities that could potentially influence participation and outcomes in Colombia's Congressional elections scheduled for March 14, 2010 and constitutes interference with the free exercise of the vote.

In our meetings with Colombian citizens, elected officials, and representatives of political parties (see Annex 1), the following complaints were registered:

Buying and selling of votes. This was the most common complaint received by the regional delegations of the Mission. Citizens in Tierra Alta, Montelíbano, Montería reported being offered anything from bags of cement and roofing materials, to cash payments of 20,000 to 50,000 pesos per vote. Typically, voters and representatives of opposition parties reported that vote-buyers from various political parties would require confirmation that a citizen had voted as agreed before paying the full amount. Common methods for doing this are “*el carrusele*” where a ballot already marked in favor of a particular candidate would be given to the person receiving the bribe, and after voting, the same person would return with a blank ballot, allowing the process to continue *ad infinitum*. Others included taking photos of marked ballots with cell phones or cameras, or using a carbon to prove the vote.

Misuse of voter I.D. cards: This was commonly cited as a method of voter fraud in all regions. I.D. cards from people of other voting districts, counterfeit cards, and even

¹⁶ Documented in del Viso, Nuria. Paramilitary Intimidation in the Colombian Elections. Bulletin Info CIP no. 10 (Elections in Latin America), CIP-FUHEM. Centro de Investigación para la Paz. February 15, 2006. See also Paramilitaries' Heirs: The New Face of Violence in Colombia. Human Rights Watch. February 2010.

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cards from deceased persons have been used. The fraudulent use of voter I.D. cards generally involves the collusion of officials at the voting table on Election Day.

Voter Coercion: The Observation Mission heard numerous complaints that subsidies given to displaced and poor families through the *Accion Social* program of the President's Office were being used on occasion to coerce people. During the last Presidential elections, campaign representatives told families who receive subsidies in Montería and Tierra Alta, Córdoba that if they did not vote for President Uribe, Plan Colombia would be cut, and with it, their subsidies. A similar message has been heard during this election campaign in support of congressional candidates in parties of the President's coalition in Bucaramanga and other cities.

Fraud by officials at voting table ("jurados"): In all regions there were reports that official poll watchers have been "bought" by parties to promote their interests and either turn a blind eye to irregularities or actively participate in them. These include activities such as marking ballots in favor of their candidate, annulling ballots marked for opposing candidates, and falsifying vote counts.

Removal and obstruction of electoral observers at voting centers: citizens reported this from various regions of the country regarding past elections. The decision to evict poll watchers has reportedly come from officials at voting tables, without clear justification. In addition, several reports were heard of cases where electoral observers were prevented from being within 2 or 3 meters of the voting table, thereby making it impossible to clearly see the process of checking I.D. cards and the handing out of ballots or receiving of marked ballots, and impeding the work of the election observers.

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Impediments to the right to vote: In several centers, this was done by using monopolies over public transportation to cease service on Election Day. A political party reported to the Cordoba group that a candidate hired out the entire fleet of buses normally under contract to provide public transit on Election Day, leaving many citizens in the area without transportation to the polls unless they accepted transportation from a particular candidate, thereby possibly compromising their vote. The fear that paramilitary or guerrilla groups will impede voting Election Day by blocking access has also been reported.

Finally, university students complained of a "culture of corruption" that has permeated society to the extent that election fraud was seen as normal or inevitable. Several expressed the need for education within the society at large and in the schools to combat this problem.

A detailed report on the subject by the national Elections Observation Mision (M.O.E.) entitled "Electoral Irregularities and Crimes" was published in January 2010.

SECTION 3: Campaign Financing

Although there are efforts on the part of the majority of the political parties and of the National Electoral Council to regulate and control campaign funding, the Mission received reports of the existence of illegal electoral campaign financing practices, especially originating in drug trafficking. It must be emphasized that these illegal practices sometimes are effective especially in the case of illegal funds coming from drug trafficking. Furthermore, there are pacts among candidates and public servants and businesses that invest in campaigns to provide benefits after the elections such as contracts for infrastructure construction with the State. Although donations from businesses to electoral campaigns for Congress are legal, this type of pact encourages corruption.

Legal Framework for Electoral Financing

In Columbia a mixed system for financing politics exists.¹⁷ Both the State and individuals contribute resources for the “functioning of electoral campaigns of the parties and political movements with legal identities”.¹⁸

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Conditions for state financing of parties are laid out in Article 12 of Law 130 of 1994 (23 March). It was believed because of Article 38 of the same law, that the National Fund for Financing Parties and Electoral Campaigns was attached to CNE. The resources in this fund are distributed according to the following criteria: a) a fixed basic sum equivalent to 10% of the fund distributed in equal part among all the parties and political movements; b) 50% among the parties and movements in proportion to the number of seats obtained in the last election for the Congress of the Republic or for the Departmental Assemblies, as appropriate; c) 10% (sic), d) 30% for contributing to activities which parties and movements undertake for meeting their goals and having success with their proposals.¹⁹ For the year 2010, Resolution No. 0248 of 2010 (16 February 2010) fixes the amount and distributes it among parties and political movements with valid legal status, the state resource assigned to the National Financing Fund of Parties and Electoral Campaigns for the financing of the same, valid for 2010 [...].

Furthermore, Law 130 of 1994, in Article 20 regulates the financing of the modalities such as: a) Contributions of members; b) donations; c) investments; d) Public acts, such as distribution of brochures, buttons, publications and any other money-making activity on the part of the party or movement; e) credits; f) donations in kind.

As far as the financing of electoral campaigns goes, Articles 13 and 14 of Law 130 of 1994 define the contributions of the State and of individuals respectively, although the last article clearly states that: “No candidate in charge of a popular election will be able to invest in the respective campaign a sum which exceeds that fixed by the National Electoral Council, even if it comes from his own pocket, from that of his family, or from

¹⁷ Misión de Observación Electoral (2010). *El financiamiento de la*,

¹⁸ Constitución Política de Colombia de 1991. Artículo 109.

¹⁹ Artículo 12 de la Ley 130 de 1994

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contributions from private individuals.²⁰ The CNE established through its respective resolutions as much for presidential and vice presidential elections as for Congressional elections, the limits of financing of electoral campaigns.²¹ The maximum limit of expenses in presidential elections for 2010 for the first go round is \$17,000,000,000 [pesos] and for the second is \$8,500,000,000 [pesos], and the upper limit in Congressional elections are in general for the Senate and the Chamber \$675,000,000 [pesos], but with lower limits for the District Capital and according to the census of electoral registration.²² For example the value in regions where the census shows 100,000 or fewer, has an upper limit of \$264,000,000 [pesos].²³

It has to be taken into account that in the case of presidential campaigns, there is a special regimen for financing, defined in the Law of Electoral Guaranties, Law 996 of 2005 (2 November), which seeks to guarantee equal conditions for all the presidential candidates, and which furthermore regulates participation of public servants in politics and provides guarantees to the opposition.

At the same time there is a maximum established for individual donations to presidential campaigns. In the case of presidential campaigns, the law stipulates a donation of 80% by the state and 20% by individuals. The maximum donations for a presidential campaign by an individual cannot exceed 2% of the value determined by the global maximum of all the individual donations.²⁴ Here one has to take into account Law 996 of 2005 which makes explicit in Article 14 that the 20% presidential campaigns can receive must come from “natural” persons, thus excluding donations from legal entities such as, for instance, businesses.

A maximum for donations from individuals for electoral campaign for Congress who could donate the whole amount permitted for financing by individuals hasn't been established. As mechanisms for state financing of electoral campaigns there exists the replenishment of votes and the advance of the replenishment of votes. This last mechanism is applied to presidential campaigns, in the sense that it gives “an advance of the value which it is estimated will be obtained by replenishment of votes.” [11] The mechanism of the replenishment of votes is applied both for presidential campaigns and for electoral campaigns for the Congress after the elections, in order to finance expenses incurred during the electoral campaign. The number of votes obtained by a candidate is multiplied by the value previously established by the CNE or the law. The conditions and respective values for the replenishment of votes are established for the

²⁰ Artículo 14 de la Ley 130 de 1994.

²¹ Artículo 14 de la Ley 130 de 1994.

²² Véase: Consejo Electoral Nacional (2009). Resolución No. 0552 de 2009 (01 de Julio) y Resolución No. 0521 de 2009 (9 de Junio). Bogotá, Colombia.

²³ Misión de Observación Electoral (2010). *El financiamiento de la política*, Cartilla G. Bogotá, 2010. Por publicar.

²⁴ Ibid.

electoral campaigns of 2010-2014 by Resolution No. 0020 of 2010 (14 January) of the CNE, [which allocates funds] for the presidential campaign. For the campaigns for Congress conditions and values are determined by Resolution No. 1139 of 2009 (1 December) for the CNE. For example, there is a value of \$4217.85 per vote for campaigns for Congress, and \$4217.85 per vote for the presidency (without previous advance). In order to have the right to the replenishment of votes the presidential candidates have to obtain "a quantity of votes equivalent or superior to 4% of the valid votes cast, [if they don't] not only will they not have access to the replenishment of votes, but also they will have to return all the money given as an advance," [12] and for the candidates for Congress, the campaign list must pass the threshold. Only parties and political movements that have presented their statement of accounts have the right to the replenishment of vote, but independent candidates receive directly the value of the expenses of their campaigns.

The statement of accounts is required in the Constitution Policy of 1991 in Article 109 that says "the parties, movements and candidates must render publicly their accounts of the volume, origin and destination of their income." At the same time, Article 18 of Law 130 of 1994 (23 March) determines what type of public report the parties and political movements must present to the CNE, for example:

- a) The income and annual expenses of the party or of the movement before the 31st of January of every year;
- b) The destination and use of public funds which were assigned them; and
- c) The income obtained and expenses realized during the campaigns. This balance must be presented at the latest one (1) month after the corresponding electoral [debate].

Article 20 of the same law specifies that the categories of income must appear in the statements of accounts, for example:

- a) Members' contributions;
- b) Donations
- c) Accounts of investments
- d) Accounts of [net gains] of public acts, of the distribution of brochures, buttons, publications and whatever other profitable activity the party or movement undertake;
- e) Credits;
- f) Donations in kind valued at their commercial price; and
- g) Public moneys.

Besides noting that for presidential campaigns Law 996 of 2005 (24 November) has established various requirements for statements of accounts such as the appointment of a chief of the campaign, accounting books and supports, an auditing system, a single account and the necessary sub-accounts. But there are also special norms for this type of campaign described in Resolution no. 0330 of 2007 (30 May) of the CNE.

For the remaining electoral campaigns for Congress, the requirements that apply are expressed in Law 130 of 1994 as well as in Resolution No. 0330 of 2007 (30 May) of

the CNE concerning the registration and presentation of the accounting book, and the subsequent presentation of a consolidated report on the part of the parties and political movement. Once approved this report for the CNE must be published. The CNE regulates through Resolution 0212 of 2010 (9 February) and Resolution 1142 of 2009 (17 December), the limit, or so called cap on publicity for presidential campaigns and Congress respectively, in order to avoid inequality in the campaign.

In so much as the sanction for violations [13] of the expressed norms of Law 130 of 1994, Article 39 Number A refers to fines, specifying the range of value in which there can be fines. Such values are annually updated, to maintain their value in time.

Result of Observation: Illegal Practices

In the elections of 2010 the excess of money in the campaigns has been denounced. The evidence for this excess is seen in, among other ways, the large quantities of publicity such as billboards that are very expensive, and also in offices and commercials. Furthermore, the possibility exists that many resources for the financing of some candidates' campaigns could be the fruit of financial agreements, or from sources from the drug trade or from public resources. [15] According to the people interviewed by the International Mission for Pre-electoral Observation in different regions, an excess of resources in electoral campaigns and the exceeding of limits established by the CNE are mainly seen in the perceptions of the quantity of publicity. Many people think some candidates manage budgets that are too high for their election campaigns.

Exceeding limits

There is a general perception that some electoral campaigns spend quantities of money that exceed the limits established by the CNE, above all in elections to Congress. Electoral publicity is one of the expenses where it is evident that limits are exceeded. Especially in the Valle de Cauca, people perceive that the Party of National Integration (PIN) [16] and the Party of the U; and in Antioquia the Conservative Party spent money excessively on publicity. In Colombia publicity is extremely expensive and thus it serves as an indicator of the high costs of a campaign. The president of the CNE, Marco Emilio Hincapié, says the fact that there may be excesses in spending on publicity by the Party is evident in an elevated number of posters in different regions of the country, which could easily reflect excessive investment in some electoral campaigns. [17] In reaction, the CNE began to investigate the excess of publicity poster in Bogotá and found that 5 parties violated the limits on posters, passing the legal limit of 15 per party: the party of "the U" had 65, the Conservative Party, 25; Radical Change, 20; and the Alternative Democratic Pole and the Liberal Party each had 18. [18] The respective parties had to start lowering the number of billboards that exceeded the limit.

At present there are two cases that are being watched because of their supposed exceeding of limits. One of them being investigated at this time is the financing of the collection of signatures for the reelection referendum for the second reelection of the present president, Alvaro Uribe Vélez. Supposedly the maximum limit for financing this initiative has been exceeded, which is evident in the sum of 2000 million pesos which were invested in it when the maximum legal limit is 30 million pesos.[20] What attracts

attention is not only the fact that the maximum was exceeded but also that the majority of the resources were contributed by “consortia and businesses which had contracts with the State,” [21] through a foundation. Given that such donations are prohibited for legal entities such as businesses, [22] one hopes in this case for at least an official pronouncement on the part of the Constitutional Court. Another case where the limit was allegedly exceeded is that of Andrés Felipe Arias, precandidate of the Conservative Party for the presidency [23], a case that is currently being investigated by the CNE. [24] Referring to the case of Arias, Daniel Coronell [25] in his column maintained that there are various beneficiaries of the program Agro Ingreso Seguro [Secure Agro Investment] on the list of donors. This is a very critical situation because of the fact that Arias was, before launching himself as a candidate for the presidency, Minister of Agriculture. It is important to remember that donations or presidential campaigns by legal entities such as businesses are prohibited by law, although in this case a foundation has also been funded for channeling donations to the campaign. This case is awaiting a pronouncement from the CNE, since it concerns a precandidate for the Presidency.

Along the same lines, there is another case which is drawing a lot of attention: that of the Ex-Senator and Ex-Vicepresident of the Conservative Party Alirio Villamizar in whose house in Bucaramanga, Santander, nearly a billion pesos in cash was found, and who is accused by the Justice Dept over the notaries scandal, although there are 37 senators and representatives in addition who have received notaries as compensation for support given to the project for constitutional reform which allowed the reelection of the president.” [27]

Because of this large sum of money, and the accusations against him, The Supreme Court expedited an order of capture, and at present Villamizar finds himself in jail. Villamizar insisted that the money found in his house was donated by individuals for his political campaign in 2010. [28] But it has to be remembered that even if this were so, the sum of money exceeds by a great deal the limit of 675,000 pesos established by the CNE for electoral campaigns for candidates for Congress.

Corruption – Influence in Electoral Campaigns by Means of Resources from the Public Budget

According to El Tiempo.Com, the Minister of the Interior has received at this point 54 accusations of possible acts of corruption in the current electoral campaign of 2010, the majority of these in the departments of Santander, Antioquia and the Valle de la Cauca, [29] regions visited by the International Mission for Pre-electoral Observation. Among the acts which were denounced were corruption of the voter (including among other places in Antioquia, Santander and Valley de la Cauca), public moneys in politics (among other places, in the Valley of the Cauca) and the participation of functionaries in politics (among other places, in Valle de la Cauca).

The mission received reports of corruption with illegal funds in all regions, not only the buying of leaders of barrios, and among the population—especially those found in vulnerable conditions, but also of public servants like governors and mayors, to facilitate the election of certain candidates and to block the election of undesirable candidates.

According to the people interviewed by the International Mission for Pre-electoral Observation, there is a practice of influencing the electorate through the use of public resources. In this way, the corruption of public servants plays an important role, since often they are the ones who permit or exercise illegal practices in order to favor candidates. In this vein, one has to take into account that corruption exists not only during political campaigns, but also throughout many regions. People interviewed by The Mission for Observation said, for example, that in the Baja Cauca, corruption constituted a major problem. People considered that corruption existed equally in the campaigns of the elections of 2010.

Publicity funded by governorships and offices of mayors through public funds is even denounced. The mayor, together with the registrar, assigns the places used for electoral publicity in their respective municipalities.

A possible act of corruption is the mechanism of contracting for infrastructure work in exchange for the financing of electoral campaigns. Public accusations alleged that there are members of Congress in the governing coalition who indicate to the mayor to which businesses contracts should be given, in order to obtain resources for financing their campaigns. As one public servant in Antioquia explained, municipal contracting—for example, for works of infrastructure, are directed by the mayors, who can, through the illegal awarding of contracts, favor their candidates and at the same time themselves benefit by later receiving donations of money from the businesses. In order to assure that the contract is awarded to a specific business, one puts in the Term of Reference criteria or previous experience section conditions which only the business (in general, construction companies) to be favored can fulfill. In the case of presidential campaigns, donations from businesses are forbidden, but in the rest of the campaigns, they are permitted. But although in this last case, they are legal, they have the potential for political consequences, in the sense that they cause businesses to have undue influence over candidates (and mayors who support them), and thus provide an incentive for corruption. The construction business as a big campaign contributor expects that it will be favored later with contracts for infrastructure work.

During the visit to the regions of Antioquia the International Mission for Pre-electoral Observation was told by social groups about the purchase of votes in the municipality of Bello [33] through the use of public resources, as seen in the fact that the mayor's office is constructing houses for leaders and/or houses of social/public interest in order to buy votes (in blocks and facilitated by the leaders) for one candidate. At the same time, according to journalists and social groups, there exists an excess of publicity on behalf of this same candidate.

Public servants' support for candidates for Congress in their campaigns through the use of resources from the public budget, are given, for example, of events which promote candidates, including through the use of the Program of Alimentary and Nutritional Improvement for campaigning.[34]

Cases of public servants using their public offices to promote their candidates in Valle de la Cauca and Santander have been reported to the Mission. There exist as well

accusations of corruption through the involvement of employees of state entities in electoral campaigns. [35]

Also during visits to different regions, the International Mission for Pre-electoral Observation learned of the anticipated financing of campaigns in exchange for the facilitation of votes. For example through the practice in which a municipal leader facilitates votes in elections to Congress,[but] through the illegal practice of buying votes for a candidate in exchange for financing his own campaign for the mayor's office in the next regional elections ahead of time. To clarify, there are also cases where leaders of barrios or communities are contracted by candidates to create propaganda in favor of these candidates in their zones of influence, for which they receive a salary in exchange. This is not illegal, unless the leader does something illegal like offering money in exchange for votes.

Summarizing, it can be said that in some regions of Colombia visited by the Mission, influence in an election is sought by means of public funds from national, departmental and municipal coffers to favor candidacies for Congress and the Presidency.

Illegal Resources from Drug Trafficking

Another reality that still exists in Colombia is that there are narco-trafficking resources in electoral campaigns, which has been criticized especially in the Valle de Cauca. It is important to remember Process 8000 dealing with financing Ernesto Samper's presidential campaign in 1994. [36] It has to be emphasized that to detect illegal sources of resources like those of narco-trafficking is more difficult today since many resources are funneled through legal businesses. In order to continue the illegal business, some armed groups dedicated to narco-trafficking support electoral candidates with their resources in regions where they have territorial control. During the International Mission for Pre-electoral Observation's visit to the department of the Valle de la Cauca the people interviewed expressed concern about the candidates of the Party of National Integration (PIN) for supposed links with questionable individuals and believe that there are some people who receive illegal funding for their campaign. The department of the Valle de la Cauca also is on the list of condemned acts sent to the Interior Ministry regarding the infiltration of illegal money in electoral campaigns [37]

Buying Votes

The purchase of votes is an illegal act. It is important to emphasize that financing for the purchase of votes comes from different sources such as public institutions, narco-traffickers, and illegal armed groups dedicated to narco-trafficking. What makes it difficult to detect this illegal money is the fact that it is often invested in cash and thus it does not appear in accounts. The practice of buying votes by means of public resources -- for example through the construction of houses of social/public interest -- to change votes facilitated by leaders of communities/barrio is a fact which according to the people is difficult to explain and denounce. Regarding the purchase of votes in Antioquia, we received a series of public denunciations identifying people from the municipality of Bello who were brought in by trucks to vote, and to vote for two

candidates (of the Conservative Party) in exchange for money. They called these prepaid votes.” [39]

As was noted in many regions the International Mission for Pre-electoral Observation visited, there are candidates who pay large quantities of money in certain rural zones, for example for the construction of houses or in one confirmed case in the Bajo Cauca (Antioquia) where people said that a candidate equipped a football team with sports equipment in exchange for their votes although the presentation of the materials was made by a Councilmember.

According to some people of the Bajo Cauca who were interviewed by the Mission for Observation, as there were in previous elections, in the elections of 2010 there are again candidates from Córdoba who campaign in Caucasia and who supposedly buy votes, although at this point there are no official accusations. People also said that in the Bajo Cauca they were paid between 100,000 and 130,000 peso for twenty votes, or the [practice of buying the vote for a sack of cement.]

But also, it is not just candidates who support corruption in electoral campaigns, since leaders volunteer to sell votes, for 50000 pesos a vote.

Disadvantages in Financing as Political Reality

As was noted by members of the Conservative Party to the International Mission for Pre-electoral Observation, certain candidates have disadvantages in seeking financing for their election campaigns. Many of the new candidates don't count on the same financial support as known candidates, and women candidates are not being supported with resources by the party. The financing of electoral campaigns through public financing by the CNE often is not sufficient, especially for new candidates, who don't receive many individual donations either.

Thus the campaigns that receive financing from businesses have a clear advantage, as opposed to those that don't receive this type of financing although obviously those that receive illegal resources from narcotrafficking have an even greater advantage.

Mechanisms of Control

Although it is known that there is often dirty money in some campaigns, to denounce it especially in regions in which illegal armed groups are present is dangerous because of the possible consequences. What makes the work of investigation difficult is the fact that not many formal accusations have been documented with proof. In any case, it is difficult for the person who wants to denounce a violation to prove it since he is putting his life at risk by doing so. Another problem is that as various authorities told us they are not capable of adequately monitoring the electoral processes because of a lack of resources. Other authorities show a lack of interest and a lack of will to follow up on accusations of the purchasing of votes or financing that exceeds limits. According to the people interviewed by the International Mission for Pre-electoral Observation this attitude is perceived to exist in the Monitoring Committees at a municipal level in Antioquia, especially in municipalities where the mayor's links to illegal groups were spoken of, or where a mayor was seen politically committed to certain candidates. In

these regions the role of the Monitoring Committee is limited to having informative meetings and not so much to investigation.

It has to be emphasized that neither do the political parties exercise financial control during the campaigns, but only after the election, when the party demands that candidates present their accounts so they can be sent to the Campaign Fund for review.

Investigation of violations of campaign spending limits is delayed up to two years. The CNE only exercises control at the moment candidates register and then thirty days after the elections, when the parties/candidates have to submit the accounting registers of their electoral campaigns for review.

Votebien.com says that in the period from the Congressional elections of 2006 to the end of October of this year "137 aspirants to the Chamber of Representatives and 27 candidates for the Senate did not submit reports of their rendering of accounts to their political parties, according to the statistics of the CNE." [41] It should be said that neither the political parties nor the CNE knows how these candidates financed their campaign. This demonstrates in terms of rendition of accounts the unfavorable situation in which the Campaign Fund can only review the totals reported by the parties and the final report to try to determine if the accounts square. The Fund has very few resources such as functionaries to perform these reviews so that control is minimal. [42] In cases where accounting registers were submitted, many contain errors in the sums or errors in the application of formulas or don't comply with certain requirements. In this sense it is important to note that apparently "there is no law or place where it says how many times the reports can come and go. This means that the CNE still has uncertified accounts from the elections of 1997," and today there are still 23 accounts in the process of correction from the 2006 campaigns for Congress." [43] Evidence for these accounting problems can be seen in the lack of a norm for sanctioning the quality of the reports and for determining which form they are presented in. Another problem is that thanks to Resolution 157 of 2006 which the CNE issued, the parties only have to present consolidated reports and summaries without detailed descriptions of "what each candidate received and spent, and of what he submitted to his party." [44] It has to be said that there is no effective control on electoral campaigns.

Although the CNE investigated different candidates and parties for violation of the rules in electoral campaigns both for Congress and for the Presidency in 2006, until the end of October 2009 there was "no sanction for violation of the limits," [45] nor, further, for abuse in the use of publicity or failure to submit reports, etc. There still are reviews and investigations extant for the accounts of previous campaigns of some candidates, which is not necessarily to say that the limits were exceeded. The results of these investigations have to be awaited. [Even] Many people perceive that there were candidates who exceeded the limits, and do so now for the 2010 elections who are exceeding the limits now for the 2010 election. What makes investigations and sanctions difficult for the CNE is the fact that their magistrates are named by Congress, which naturally creates a conflict of interest for them, in this way limiting their autonomy to proceed against parties and candidates which violate the law. Furthermore it has to be taken into account that when a case a violation of limits for financing of an electoral

campaign is proven, the sanction can be to remove the legal status of the respective parties.

In this sense, Law 130 of 1994 regarding sanctions for the violations of the norms it lays out, should be taken into account as should Article 07 of the Political Constitution of 1991 which was modified by article 1 of the Reform of 2009 by Legislative Act 01 of 2009 (14 July). This establishes the responsibility of parties and political movements for “[...] responding for every violation or contravention of the norm which govern their organization, function or financing [...]” This same article establishes as possible sanctions “[...] fines, return of the public resources received through the system of replenishment of votes, including the cancellation of legal status. In sum, one can say that although the law anticipates sanction in case of violations, laws do not exist which specify clearly the different type of crimes (among other elections) and their respective sanctions, like fines.

Sadly it appears that in Colombia a politician’s saying, “A campaign costs what one wants it to be worth” remains valid.

Section 4. The Use of Government Programs to Influence Election Results

Acción Social and programs of the presidency

The government of President Álvaro Uribe Vélez created the Presidential Agency for Social Action and International Cooperation by Decree 2467 in 2005, fusing the former Social Solidarity Network—charged with administering social programs under the presidency—and the Colombian Agency for international Cooperation, which channeled technical and financial aid to the country.²⁵

Since then, *Acción Social* is the agency that channels national and international resources to social programs under the presidency, and that attends to the needs of vulnerable sectors of the population affected by poverty, drug trafficking and violence. It also coordinates programs to assist people who are the victims of armed conflict, through the National System of Integral Attention to the Displaced Population. The agency also handles inter-institutional coordination of social programs to enable orderly and timely delivery throughout the various regions of the country.

Among the different programs that have been developed under *Acción Social*, the “*Familias en Acción*” program is the most recognized at the national level and has the broadest coverage, serving nearly 3 million families. The program consists of providing conditioned subsidies to mothers and poor families and/or families displaced by violent conflict, on the condition that they fulfill commitments such as sending their children to school regularly and conducting regular health evaluations. This program is widely hailed by local authorities as an important strategy to fight poverty and is widely accepted among recipients.

Results of the Observation

²⁵ Cfr. <http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=3&conID=544&pagID=820>

As mentioned, the International Pre-Electoral Observation Mission carried out visits to four regions of the country with different teams. After analyzing the results from all four regions, we were impressed to find that a wide variety of sources coincided in affirming that candidates of the Partido de la U (Party of the U) and of other parties in the governing coalition have attended meetings with beneficiaries of the social programs of the presidency, especially "*Familias en Acción*", where they stated that if the beneficiaries do not support them with their votes "the subsidies they receive from the president will end".

It is of grave concern that there appears to be no separation between the presidential figure and needed government programs that attend to displaced persons and other vulnerable sectors. This leaves open the possibility of manipulation of subsidies and the restriction of the voter's right to choose freely who to vote for.

The Mission received complaints of cases of manipulation and misinformation on the part of regional politicians regarding how the benefits of the program "*Familias en Acción*" are delivered in poor neighborhoods of all the municipalities we visited. Unfortunately, fear kept people from filing formal complaints to the authorities regarding the misuse of these programs and the sources asked to remain anonymous, since they would be placed at risk by signing a document with their names. However, it is significant that since the first declarations of the International Pre-Electoral Observation Mission last Feb 15, the media has demonstrated its interest in following up on investigations. This demonstrates that our affirmations do not seek to be an attack on Colombian institutions, but rather reflect a genuine concern regarding the misuse of social programs. We identify a need to establish conditions for the exercise of democracy, delineate a clear distinction between the obligations of the State and activities of political campaigning, as well as assure equal terms for all parties and candidates within the framework of electoral processes in Colombia. This report seeks to give voice to the perceptions, concerns, and complaints of citizens that have been repeatedly expressed on the condition of anonymity, in the interest of improving the functioning of democracy and the application of existing laws.

The International Pre-Electoral Observation Mission was repeatedly told that beneficiaries of aid from *Acción Social* received subsidies with the message that these were benefits that come directly from President Uribe, and that if he were not re-elected (now an impossibility due to the recent decision of the Constitutional Court) they would be terminated. Community leaders and recipients of *Acción Social* stated that candidates to the Chamber of Representatives and Senate have attended meetings with beneficiaries, where they have said that if they do not vote for them and for the governing party, the subsidies they receive from the Presidency would end. This practice clearly puts opposition parties at a distinct disadvantage.

These events have been publicly reported by the daily *El Tiempo*, which learned of "specific cases in which the name of the presidential program *Acción Social*, which aids 4 million people with voting rights, is used inappropriately by candidates who say they

have the power to decide to assign or suspend subsidies.²⁶ The government reacted by ordering the suspension of subsidies of all programs of *Acción Social* until after the elections, and the presidential agency itself has denounced six cases of the use of the program for political campaigns.²⁷

Other Cases of Anomalies

Acción Social itself has denounced the manipulation of its programs for electoral purposes and we know, through the media, that these complaints are already in the hands of the Attorney General's Office. The same sources have denounced cases in the municipalities of Tenjo (Cundinamarca), Cajamarca (Quindío), Saldaña (Tolima), and in the department of Nariño. Another case of the presumed misuse of the *Familias en Acción* program for electoral purposes was reported involving Julian Rivera, candidate for the Chamber of Representatives for the Partido Cambio Radical (Radical Change party) and former official of *Acción Social*.

The Civil Prosecutor's Office, through the System of Information and Disciplinary Acts (GEDIS), has received complaints from citizens in the past three months regarding alleged manipulation of the programs of *Acción Social* in municipalities including Cucutilla (Norte de Santander), Dagua (Valle), Guaduas (Cundinamarca), Tierralta (Córdoba), Agustín Codazzi (Cesar), Bolívar y Toro (Valle del Cauca), Santana (Boyacá), Florencia (Caquetá), Yopal (Casanare) and Venadillo (Tolima).

In the same way, officials of *Acción Social* in the Territorial Units of the agency have denounced that regional politicians have called on recipients "presumably to attend meetings of the program, then demanded that they present their documents and political affiliations and later warned them that if they do not participate in the meetings they would have their public aid suspended by the government."²⁸

This Mission does not seek to supplant the functions that are assigned to government offices like the Attorney General and the Civil Prosecutor to investigate and prosecute these charges. The aim is to suggest that in the light of these complaints, *Acción Social* begin actions that make it perfectly clear to recipients who do not have access to internet or who in some cases are illiterate that it is not the regional politicians who

²⁶ [El Tiempo.com \(2010\). Trasteo de votantes, subsidios de Acción Social y dinero en efectivo prenden alerta electoral. El Tiempo.com \(21 de Febrero de 2010\): http://www.eltiempo.com/elecciones2010/alerta-electoral-por-irregularidades-como-trasteo-de-votantes_7295161-1.](http://www.eltiempo.com/elecciones2010/alerta-electoral-por-irregularidades-como-trasteo-de-votantes_7295161-1)

²⁷ [El Tiempo.com \(2010\). Trasteo de votantes, subsidios de Acción Social y dinero en efectivo prenden alerta electoral. El Tiempo.com \(21 de Febrero de 2010\): http://www.eltiempo.com/elecciones2010/alerta-electoral-por-irregularidades-como-trasteo-de-votantes_7295161-1.](http://www.eltiempo.com/elecciones2010/alerta-electoral-por-irregularidades-como-trasteo-de-votantes_7295161-1)

²⁸ Diario del Huila, febrero 20 de 2010. [http://www.diariodelhuila.com/actualidad/item/10245-m%C3%A1s-denuncias-por-acoso-de-familias-en-acci%C3%B3n-](http://www.diariodelhuila.com/actualidad/item/10245-m%C3%A1s-denuncias-por-acoso-de-familias-en-acci%C3%B3n)

deliver the subsidies of “*Familias en Acción*”, nor that the program or inclusion in it are “favors” that should be exchanged for votes for a certain candidate or political party.

REGIONAL REPORTS:

- 1. Report from Córdoba (Montería, Montelíbano)**
- 2. Report from Santander (Barrancabermeja, Bucaramanga)**
- 3. Report from Valle del Cauca (Cali, Buenaventura)**
- 4. Report from Antioquia (Medellin, Caucasia)**

Conclusions and Recommendations of the International Pre-Electoral Observation Mission to Colombia, February 2010

The International Pre-Electoral Observation Mission recognizes that problems with electoral systems and deficiencies in democratic processes exist in our own countries, and we are committed to working there to achieve full democracy as well. We are convinced that building democracy is a constant task in all our countries, and we emphasize that Colombia is not the only society that confronts this challenge.

The following conclusions and recommendations are offered in the spirit of democratic solidarity, based on our professional observations and the concerns of hundreds of Colombian citizens expressed to us, with the full conviction that achieving greater democracy in Colombia is a fundamental humanitarian concern for the country and for the Hemisphere. At all times, it is the men and women of the Colombian people who are the final arbiters of their sovereignty and national destiny.

Recommendations:

1. The Mission is gravely concerned about the evident control exercised by illegal armed groups in the regions visited, with special emphasis in the city of Buenaventura. The Mission urges local and national governments to act on the concerns of the citizens in vulnerable sectors and to take all necessary measures to control and dismantle these criminal elements.
2. The Mission urges the immediate employment of effective measures by the Colombian government at all levels to avoid acts of intimidation and manipulation of the vote by armed criminal bands operating in the regions, as well as the adoption of adequate measures to avoid “capture of the State” by these delinquent groups.

3. The Mission recommends that the executive branch and the national Congress provide sufficient human, financial and organizational resources to electoral institutions, to enable these to carry out their duties fully and autonomously.
4. The Mission recommends that the legal sanctions against the perpetrators of electoral crimes such as tampering with election results, registering voters outside their places of legal residence, collecting voter credentials, violating the Law of Guarantees, etc. be imposed in an expeditious and effective manner. It is necessary to strengthen the operations of the justice system in electoral matters, since impunity is an invitation to fraud.
5. The Mission recommends that the nation update its electoral census to avoid situations reported in which “the dead vote”, and other anomalies in voter registration lists.
6. The Mission recommends supporting efforts to build greater citizen participation in social control of electoral processes so that local authorities and government offices charged with monitoring the elections can achieve the full trust and confidence of the citizenry and the political parties. As part of these actions, it is necessary to strengthen Electoral Observation initiatives among various groups of civil society.
- 7.
8. The Mission recommends increased efforts to vigorously apply laws that limit campaign publicity, guarantee greater transparency and legality in access to and benefits from social welfare programs and public policies, limit and regulate the use of government contracting during electoral periods, and other laws and regulations regarding free and fair elections.

About us:

Global Exchange is an international human rights organization that supports democratic participation as a prerequisite of social, economic and environmental justice. For more than a decade Global Exchange has actively supported international democracy in the world through electoral observation.

We have lead or participated in election observation in more than a dozen countries, many of which have been in transition from dictatorship to democracy. In cooperation with local civil society organizations, we have observed or monitored elections in Mexico, South Africa, Haiti, Nicaragua, El Salvador, Guatemala, Indonesia and United States. To this end, Global Exchange has established itself as a credible defender and supporter of democracy.

To carry out pre-electoral observation in Colombia, Global Exchange brought together a team of investigators, professionals, citizens and democracy advocates for Colombia from the following organizations:

- CUPE – SCFP Canadian Union of Public Employees.
- Washington Office on Latin America.
- Fellowship of Reconciliation.
- Co – Development Canada.
- The Council of Canadians.
- Afrodes USA.
- U.S. Office on Colombia.
- CIP Americas Program.
- The Sonja Haynes Stone Center for Black Culture and History at the University of North Carolina at Chapel Hill.
- Network for Advocacy and Support of Grassroots Afro - Colombian Communities.

The funding for all activities in this international pre-electoral observation mission in Colombia came from private donations and foundations supported by a small group of families dedicated to supporting democracy in the world. Global Exchange does not receive funds from the United States government or any other government.

The International Pre-Electoral Observation Mission is deeply grateful for the support we received from the Misión de Observación Electoral (MOE), on both the national and regional levels. The MOE is a civil society organization that carries out extensive research to identify and analyze electoral risks in Colombia and has been a pioneer worldwide in the field of identifying and minimizing threats to the proper functioning of democratic systems. As an independent effort, we share MOE's objectives to strengthen democracy and advance the political rights of all citizens. We thank the men and women of MOE--and especially the regional MOE members in the departments we visited--for their courage and commitment, and the support they gave us. While we acknowledge their indispensable support, the findings and conclusions of this report are exclusively those of the international mission and we take sole responsibility for them.

Appendix:

1. Instancias gubernamentales proceso electoral