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REGIONAL GOVERNANCE ACTIVITY

ASSISTANCE TO GOVERNMENT OF COLOMBIA AGENCIES
TO STRENGTHEN ELECTORAL CORRUPTION CONTROLS

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Regional Governance Activity

Assistance to Government of Colombia Agencies to Strengthen Electoral Corruption Controls



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Colombia Regional Governance Activity

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ABBREVIATIONS AND ACRONYMS

CNE	Consejo Nacional Electoral – National Electoral Council
COP	Chief of Party
DNP	Departamento Nacional de Planeación – National Planning Department
FGN	Fiscalía General de la Nación – Attorney General’s Office
GOC	Gobierno Colombiano – Government of Colombia
MOE	Misión de Observación Electoral – Electoral Observation Mission
MOI	Ministerio del Interior – Ministry of Interior
MSI	Management Systems International
PGN	Procuraduría General de la Nación – Office of the Inspector General
RGA	Programa de Gobernabilidad Regional – Regional Governance Activity
RNEC	Registraduría Nacional del Estado Civil – National Registry
SISBEN	El Sistema de Selección de Beneficiarios para Programas Sociales – System for the Selection of Beneficiaries for Social Programs
USAID	United States Agency for International Development

I. INTRODUCTION AND CONTEXT

USAID's Regional Governance Activity (RGA), in compliance with Task Order No. AID-514-TO-15-00015, submits this report on its activities to strengthen Colombian electoral authorities' capacity to investigate and sanction electoral fraud between its startup on June 22, 2015, and the Oct. 25 subnational elections.

RGA adopted a two-pronged approach to prevent electoral fraud leading up to the October 2015 local elections: a) Provide support to Colombian entities with direct jurisdiction over investigations to prevent fraudulent registration of identity documents (*trashumancia*) and b) Support Colombian entities with direct jurisdiction for disqualifying ineligible candidates running for local offices. Complementing this approach is technical assistance to the Government of Colombia (GOC) to investigate ties between criminal networks and political candidates, to deter the state cooptation through illicit funding and irregular influence over office holders.

RGA's strategy focused on supporting the GOC in taking exemplary actions to investigate and sanction electoral crimes, both as a deterrent for future corrupt practices and to bolster public confidence in the free and fair elections.

2. PREVENTING CORRUPTION IN THE ELECTIONS

To generate credibility and trust in GOC institutions responsible for organizing and upholding free and fair elections, RGA identified the sanctioning functions of each electoral oversight institution¹:

- The National Electoral Council (Consejo Nacional Electoral, CNE) has administrative capacities;
- The Office of the Inspector General (Procuraduría General de la Nación, PGN) exercises disciplinary powers;
- The Attorney General's Office (Fiscalía General de la Nación, FGN) oversees investigative and accusatory matters; and
- Legal proceedings are carried out before the State Council.

It also sought to focus on pursuing two electoral crimes, illegal voter registration and fraud in the form of ineligible candidates on the election ballot.

The governmental entities, with which RGA was able to establish a work plan before the cut-off date of this report, were the MOI, the FGN, the CNE, and the PGN. Below is a list of the specific entity within each institution with which RGA is working.

- CNE: The Council's Executive Board, through the Electoral Under-secretariat and directly with the offices of the CNE's 9 magistrates.
- FGN: FGN's Organized Crime Directorate
- PGN: Electoral Control Office
- MOI: Democracy and Citizen Participation Directorate

¹ For a description of the electoral agencies, see Annex I.

Role of Consultants

RGA supported these institutions in the October 2015 pre-electoral period; however, this support is being resumed in the post-electoral period in order to improve processes that would internally strengthen these institutions.

In general, RGA consultants supported the CNE and FGN in carrying out activities to document, analyze evidence, provide legal opinions regarding specific cases, define processes and procedures, and produce political context analysis.

The CNE received management support to substantiate files and provide legal and evidentiary analysis to support irregular voter registration and ineligible candidate rulings, thus providing clarity on the effect of political mafias in the electoral process. This support led to the revocation of 1,400,000 documents used in irregular voter registration out of 4,000,000 identity documents that were reviewed.

RGA supported the FGN in analyzing historical and political context documents, reports prepared by CSOs (such as the MOE), and a general review of open and private sources with information of interest. These reviews, conducted by the RGA consultants provided to the FGN, allowed new analytical perspectives to supplement the political and historical context analysis related to links between organized crime and political candidates and members of local public administrations. These links adversely affect the electoral process and lead to a misuse of public resources in RGA regions.

The work of these consultants seeks to help overcome the weakness of these institutions.

Illegal Voter Registration

Political mafias use irregular voter registration (*trashumancia*) to win elections in municipalities where, due to the criminal network's budget and geographic location, election results are essential for them to carry out their illegal economic activities or have bearing on the network's ability to capture state resources through public procurement contracts. These mafias take advantage of the year prior to the elections, when voters may legally update their voting registration due to a change of address. The groups hire buses to transport people and offer them money to register in a different district and vote for a specific candidate.

To prevent irregular voter registration, RGA hired seven lawyers to aid CNE magistrates to substantiate, investigate, rule and annul the atypical registration of identity documents that did not coincide with the electoral census of a specific municipality. These irregular movements were identified through a crosscheck of information between the National Registry (Registraduría Nacional del Estado Civil, RNEC) and social welfare databases (i.e., SISBEN, the System for the Selection of Beneficiaries for Social Programs). RGA helped CNE magistrates issue rulings before the October 25 elections to prevent people who do not reside in a municipality from altering the will of citizens to freely elect their representatives. The respective administrative acts had to be issued before the elections to preclude illicit registrations from being used in polling stations.

On a national level, the CNE revoked the registration of approximately 1,400,000 identity documents used for voter rigging. Of this number, RGA's consultants assisted in revoking the registration of 853,611 of these identity documents which correspond to irregularities detected in 659 municipalities in Colombia.

Of these identity document annulments, 37,270 correspond to the electoral census of 28 RGA municipalities.

While it is not possible to compare data related to irregular voter fraud from previous elections because it was not until 2015 that a new normative framework was issued (Decree 1294/2015) by the MOI which

corresponds with the CNE's Resolution 333 of 2015. This new decree allowed the CNE to move forward with irregular voter registration investigations using a crosscheck of information between various governmental databases to determine if the identity documents used for voter registration corresponded to an address different from the place residence of the applicant.

However, in the 2011 regional elections, the CNE was able to review 1,078,594 identity documents and annulled the registration of 429,172 of them (Revista de la Registraduría, May 2013). If one compares 2015 to 2011, out of 4,000,000 identity documents reviewed in 2015, approximately 1,400,000 of them were annulled for irregular voter registration. This shows that the CNE's new investigation and sanctioning processes for irregular voter registration led to an almost 320% improvement. These revocations prevented the individuals from interfering with the political will of the people and changing electoral outcomes.

Revocation of Ineligible Candidates

RGA and CNE also prioritized the revocation of ineligible candidates running for office. With this type of fraud, timing is essential. If the registration is not revoked before the elections, the candidate can be elected and can be removed from office only after a legal proceeding before the State Council; this can take years to conclude. These proceedings generate instability for local public management, undermine trust and confidence in the electoral system and cost the government dearly, both financially and in terms of legitimacy.

RGA's support provided necessary legal assistance to substantiate and push forward annulment rulings for 943 candidates running for departmental and mayoral offices and other public office positions in the October 2015 elections.

RGA support led to the annulment of 618 candidate registrations.

The majority of the annulment requests that the CNE reviewed were forwarded by the PGN and were derived from criminal or disciplinary infractions. Others were forwarded by the RNEC due to candidate lists that did not comply with the required gender quota. A smaller portion came from citizens who filed complaints directly with the CNE.

Strengthening GOC Capacity to Prevent Electoral Corruption

RGA supported the PGN in training regional prosecutors and municipal representatives (*personeros*) to instruct them on their roles and responsibilities to oversee elections. This included training in how to respond to specific criminal or corruption situations and how to identify flaws in the functions of electoral authorities before the elections, to be able to correct them on time. RGA supported five electoral oversight work sessions in four RGA departments: Antioquia, Meta, Nariño and Norte de Santander. These work sessions, held prior to the elections, were attended by 170 PGN staff.

RGA also supported the PGN in holding ballot-counting drill exercises in three RGA departments (Córdoba, Meta and Norte de Santander). The aim of these drills was to oversee and monitor the functionality of information systems created by the RNEC for ballot scrutiny. Findings from these drills were reported to the RNEC so that it could make necessary adjustments for Election Day. RGA supported the PGN to conduct the same oversight exercise for electoral software on Oct. 25, Election Day. This exercise took place in the RGA departments of Meta and Norte de Santander. This support concluded that the software's technical features were adequate and the counting process in both departments began without impediments.

RGA supported the FGN with eight criminal analysts to investigate links between organized crime and local political power in various regions of the country, to identify the masterminds behind electoral crimes who are interested in capturing state resources and controlling local administrations. This is a medium- to long-term activity initiated in September 2015. To that end, RGA and the FGN's Organized Crime Directorate have

established a work plan that includes field trips to regions to compile and provide information for ongoing investigations. This activity should result in criminal prosecutions and deter future state capture.

On Sept. 30, in a meeting between Vice Attorney General Jorge Fernando Perdomo and USAID, Mr. Perdomo acknowledged that USAID's support has been fundamental in achieving investigative successes that have resulted in effective detentions and criminal prosecutions. He reported 170 arrests of politicians and candidates as a result of the investigative model supported by USAID.² RGA support enhances the scope and reach of these investigations, arrests and prosecutions.

Ballot Counting Exercise/Software Check

Ballot Counting: During this reporting period (June – September 2015) RGA supported the PGN in conducting ballot-counting drills in the RGA departments of Córdoba, Norte de Santander, and Meta. Through these drills PGN officials prepared a findings report identifying technological failures related to the transfer of data from counting centers, problems with untrained personnel, disorder in ballot counting, the absence of election officials from different ballot counting posts, computers with USB ports enabled (this can lead to a security breach) and protocol failures in identifying the officials present at the counting stations.

These findings were included in a national report prepared by the PGN and submitted to the RNEC prior to the elections allowing the RNEC to make the necessary corrections and adjustments. Without RGA's support it would not have been possible to gather information from RGA departments.

Software Review: A review of software was conducted during the October 2015 electoral period. RGA's support permitted PGN officials (specialized software engineers) to travel to the RGA departments of Meta and Norte de Santander to review the technical state of the electoral software. This review allowed the detection of minor failures in media used to transmit electoral data from polling stations in Bogotá, as well as the recurring lack of training received by officials to use electoral software and equipment.

The PGN stated that the majority of the failures identified in the pre-electoral drills were addressed by RNEC before Election Day. Therefore it was not necessary for the PGN to implement its contingency plan on Election Day.

Future Activities

RGA has identified weaknesses in several of the agencies that it will address in the coming year.

The National Electoral Council's (CNE) dependency on the National Registry (RNEC) clearly hinders the development of its stated objectives. The CNE is not autonomous to push forward procurement processes; this seriously affects its capacity during the electoral period to properly respond to irregular voter registration (*trashumanca*) or ineligible candidate processes. To assist the CNE with this problem, RGA provided the CNE with 7 specialized professionals to support it in substantiating rulings related to irregular voter registration and revocation of ineligible candidate inscriptions in order to allow the CNE to have greater autonomy to push forward its own mission objectives.

The Attorney General's Office (FGN) is focused prioritizing the investigation of crimes against the security or lives of people such as kidnappings, homicides, and displacements, among others. As a result, electoral crimes are left in the background because the FGN does not have a team with capacity to investigate and analyze possible links between organized crime and politicians. RGA provided the FGN with a team of 10 criminal analysts who are assisting the FGN in gathering information and key evidence to push forward ongoing investigations that seek to dismantle electoral fraud networks. RGA is also assisting the FGN in

² This support relates to three analysts provided by USAID to help combat electoral crimes since the beginning of 2015; it does not refer to RGA support, which started in September 2015.

designing a methodology to help carry out investigations more efficiently of links between organized crime and politicians.

The Annual Work Plan describes the various activities that RGA plans to carry out with the Ministry of Interior (MOI), the Office of the Inspector General (PGN), and the State Council. From these activities, RGA will obtain specific diagnostics on each institution and help them address their weakness.

The CNE is the electoral institution that requires the greatest number of institutional adjustments. It is important to note that, in addition to the ongoing investigations on this institution, in the 2nd Havana accord, “A mission of experts [will be tasked with] reviewing the electoral system and its organization and, in accordance with national and international best practices, presenting recommendations to make the corresponding normative and institutional adjustments.” Therefore, RGA is focused on supporting the CNE with its process of institutionalization and standardization of processes and procedures relating the annulment of irregular voter registrations and the revocation ineligible candidate registrations. This support will enable the offices of the 9 magistrates have a standard methodology for their actions and be able to generate trust regarding their work.

RGA will also support the FGN in similar activities to define processes and procedures to investigate links between criminal groups, electoral processes and territorial administrations. As mentioned previously, the other aforementioned electoral institutions are undergoing respective diagnostic processes.

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Summary

All RGA activities carried out with GOC electoral authorities aim to increase the government’s capacity to act, prevent, deter, investigate and sanction electoral fraud and crime. Enhancing GOC capacity to act will build trust in these institutions and their roles as guarantors of free and fair elections. All RGA activities aim to prevent electoral fraud and ensure that attempted fraud leads to administrative, disciplinary and criminal sanctions.

If, despite these efforts, candidates manage to evade the rules, RGA will support the State Council to promptly investigate and annul their election if necessary. After the October 2015 elections, RGA will review lessons learned with GOC electoral bodies regarding prevention of corruption and sanction of electoral fraud to ensure that good practices are incorporated into future preventive plans.

ANNEX I. ELECTORAL INSTITUTIONS

National Electoral Council (CNE)

Colombia's electoral organization comprises two institutions: the National Electoral Council (CNE) and the National Registry (RNEC).

The CNE has nine members elected by the Colombian Congress (the Senate and the House of Representatives) for four-year terms. Given its origin and composition, the CNE is not an autonomous body, responding to individual party political agendas. This has resulted in a lack of objectivity and credibility in its actions and determinations. Since its creation in 1991, it has received criticism for lack of results dealing with the weaknesses in the electoral system over which it has influence.

The CNE is in charge of regulating, inspecting, monitoring and overseeing the electoral activities of political parties and movements, major citizen groups, their legal representatives, executive officers and candidates running for office.

The CNE has a mandate to revoke candidates' registration to run for public office upon discovering conclusive evidence that they are ineligible, as stipulated by the Constitution or the law.

The CNE also ensures political parties' and movements' compliance with rules and regulations; it regulates matters pertaining to electoral publicity and opinion polls; it oversees the political rights of the opposition and minorities; and it is tasked with ensuring fairness in the conduct of electoral processes.

The CNE must guarantee that only citizens residing in their respective municipalities participate in elections for local authorities. Law 163 of 1994 established residency as the place where the voter is registered according to the electoral census; that enrollment is manifested by a sworn statement made by the voter residing in the respective municipality. Law 1475 of 2011 declared that voter registration will take place automatically the moment the national identity document (*cédula*) is issued. If a citizen changes his/her place of residence, a change of address process will take place from one year prior to two months before the next Election Day. For this reason, for the October 25, 2015, regional elections, the RNEC established the voter registration calendar from October 25, 2014, to August 25, 2015. The CNE has responsibility for annulling a voter's registration if it finds that the voter does not reside in the municipality under which he or she registered to vote.

RGA identified irregular voter registration as a major source of electoral fraud and has been working with CNE on bolstering its operational capacity to investigate and revoke irregular registration.

Office of the Inspector General (PGN)

The inspector general is head of the Public Ministry, an oversight institution of the Colombian government. The inspector general, the ombudsman (*Defensor del Pueblo*), the delegated inspectors and Public Ministry officials exercises oversight of judicial authorities, municipal representatives (*personeros*) and other officials determined by the law.

The PGN safeguards and promotes human rights, protects the public interest and oversees the public conduct of those in public office. The inspector general, either directly or through delegates and officials, has the following responsibilities, among others:

1. Overseeing compliance with the Constitution, laws, legal decisions and administrative acts.
2. Working with the ombudsman to protect human rights.
3. Defending the interests of society.

4. Exercising oversight over the conduct of those in public office, including those elected; exercising disciplinary authority; and carrying out corresponding investigations and imposing respective sanctions according to the law.

As part of its preventive oversight functions, the PGN must oversee the organization of free and fair elections. To prevent incidents or circumstances that alter or affect the credibility and results of the electoral process, the PGN verifies the consistency and legality of the census of people who are eligible to vote, reviews vote counts and oversees the functions that the CNE and RNEC carry out.

As a preventive measure, the PGN makes observations on the different systems used by the RNEC to monitor registered voters and the organization of elections, to guarantee that those registered and eligible to vote can exercise their right. The PGN also inspects the various offices of electoral authorities to ensure that those responsible for electoral processes carry them out in accordance to legal standards.

As a result of its observations, the PGN issues recommendations to immediately correct inconsistencies it detects. It initiates disciplinary investigations and sanctions if it determines that, due to an action or omission, the democratic process was violated.

Attorney General's Office (FGN)

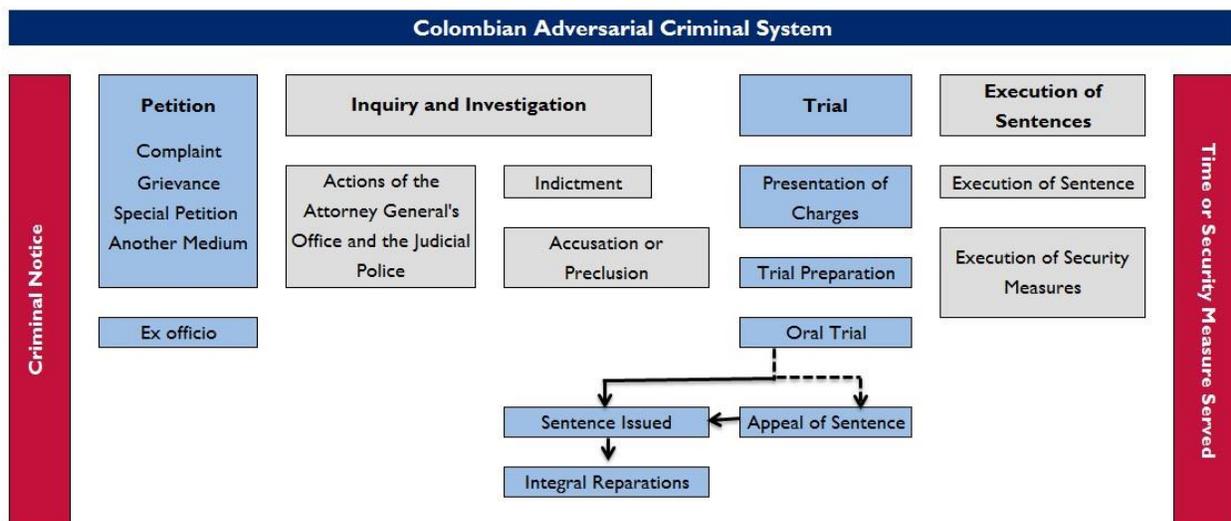
The Attorney General's Office, part of the judicial branch, investigates crimes. In accordance with its constitutional and legal responsibilities, the FGN must:

1. Request that a judge conduct a hearing, through which the indictment is formulated, and take the necessary measures to ensure: attendance by the defendant and co-defendants; the preservation of evidence; and the community's protection.
2. Present the indictment to the presiding judge to begin a public, oral, adversarial trial with the presentation of evidence and with all guarantees.
3. Request that the presiding judge preclude investigations when, in accordance with the law, there are no merits to the accusation.
4. Direct and coordinate functions of judicial police, which are carried out by the national police and other bodies, as established by law.

In the event that an indictment is presented, the attorney general or his delegates must provide, through the presiding judge, all known evidence and information, including any that is favorable to the defendant.

Through the attorney general, the vice attorney general or other prosecutors, the FGN must advance relevant inquiries and investigations when it is aware of the occurrence of a crime. If the evidence indicates that one or more individuals committed the crime, the FGN must charge them and bring them before the respective judges who advance the trial and issue a ruling if necessary.

The map of the Colombian Adversarial Criminal System illustrates how the system works:



In terms of electoral crimes, the Colombian Criminal Code establishes 11 behaviors that undermine free and fair elections:

1. **Interference with a democratic event:** An individual through deception, disrupts or impedes voting scrutiny, a town hall meeting or voting through democratic participation mechanisms.
2. **Voter intimidation:** An individual uses weapons or other means to threaten a citizen to obtain support or a vote for a specific candidate or a list of candidates or to cast a blank vote, or altogether impedes the citizen's exercise of his or her right to vote.
3. **Voter fraud:** Using deceptive means to make a citizen vote for a specific candidate, party or political movement or cast a blank vote.
4. **Voter corruption:** A person promises, pays or bribes a citizen to: vote for a specific candidate, party or political movement; cast a blank vote; or abstain from voting altogether.
5. **Fraudulent vote:** An individual impersonates another citizen to vote more than once or to illegally cast a vote in an election, plebiscite, referendum or recall election.
6. **Favoring the fraudulent vote:** A public official allows a citizen to vote more than once or impersonate the identity of another voter, or allows an ineligible voter to participate in an election.
7. **Delay in the delivery of election-related documents:** A public servant does not deliver the electoral registry or ballot box seals to the corresponding authority in a timely manner.
8. **Altering election results:** A person, through means not previously mentioned, alters voting results or inappropriately inserts documents or ballot cards in ballot boxes.
9. **Concealment, retention and illegal possession of an identity card:** An individual possesses, retains or forges an identity card or other document necessary for voting disappear.
10. **Registration refusal:** The responsible public official does not comply, delays or hinders the registration of candidates or lists of candidates for public elections.
11. **Irregular voter registration:** Citizens register to vote in districts outside of their place of residence to obtain benefits in different participation mechanisms. This crime is known as *trashumanca*.

The majority of these crimes have a four- to nine-year prison sentence, with the exception of the “delay in the delivery of election-related documents” and “registration refusal,” which has a 16 to 54 month prison sentence; these two crimes can only be committed by public servants.

When one of these crimes takes place, the FGN inquires and investigates. If it establishes the legitimacy of a crime and determines the possible culprits, it charges the culprits and brings them before judges so the judges may initiate the trial and determine the penalty to be imposed.

State Council

The State Council is the supreme contentious administrative tribunal and advisory board of the government. It contains five sections, has a Consultation and Civil Service Court and comprises 31 magistrates.

The Fifth Section has four magistrates and is responsible for settling electoral matters, specifically the following:

1. Simple nullification processes of electoral matters;
2. Annulment and rights restitution processes on electoral matters;
3. Processes related to elections or appointments during electoral processes; and
4. The extraordinary and non-appealable revision (recourse) against judgments issued by lower administrative courts on electoral matters.

The State Council is the final arbiter for deciding electoral matters once a candidate has been elected to office.