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EUROPEAN UNION

FINAL REPORTS

Election Experts Mission (EEM) to COLOMBIA
Legislative Elections - 11 March 2018

Election Experts Mission (EEM) to COLOMBIA
Presidential elections - 27 May (first round) and
17 June 2018 (second round)





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Legislative Elections**

11 March 2018

FINAL REPORT

February/March 2018



LEGISLATIVE ELECTIONS

COLOMBIA

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EU Election Experts Mission (EU EEM)

7 February - 17 March 2018

The information and views expressed in this report are those of the authors and do not necessarily reflect the official opinion of the European Union.

TABLE OF CONTENTS

1.	SUMMARY	1
2.	BACKGROUND	4
3.	CONTEXT OF THE ELECTIONS	4
3.1	The Peace Agreement and Congressional Elections	4
3.2	Nominations	5
4.	ELECTORAL SYSTEM.....	5
5.	CAMPAIGN	6
5.1	Electoral Violence.....	7
6.	CAMPAIGN FUNDING	8
7.	MEDIA.....	11
7.1	Access to Media in Election Period.....	11
7.2	The Role of Social Media.....	12
8.	ELECTORAL CENSUS.....	13
9.	CANDIDATE REGISTRATION.....	15
10.	ELECTORAL ADMINISTRATION	16
11.	PARTICIPATION OF VULNERABLE GROUPS.....	19
11.1	Women’s Participation.....	19
11.2	Participation of the Indigenous and Afro-descendant Population	19
11.3	Participation of People with Disabilities	20
12.	ELECTORAL REFORM	21
12.1	Electoral Reform Process	21
13.	ELECTION OBSERVATION.....	22
14.	ELECTION DAY	23
15.	TRANSMISSION OF RESULTS and OFFICIAL COUNT.....	24
16.	INTERPARTY CONSULTATIONS	24
17.	ELECTORAL APPEALS	26
17.1	Revocation of the registration of candidates.....	26
17.2	Challenges to the Results of the Elections	27
17.3	Electoral Crimes	27
18.	RESULTS.....	28
	ANNEX 1 - RESULTS	30

1. SUMMARY

- The congressional elections held on the 11th of March were of historical importance as they were the first elections held since the signing of the Peace Agreement in November 2016. The impact of the Agreement was felt in that elections could be held for the first time across the entire territory, without the obstacles that guerrilla groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) created in the past. Participation was close to 49% in both houses, among the highest over the past three decades.
- The Agreement involved the conversion of the FARC into a party, its participation in the elections, and implied a guarantee of five seats in each of the houses of Congress, regardless of the result obtained. Other commitments of the Agreement, such as the adoption of an electoral reform and the creation of 16 electoral constituencies in conflict-affected areas, did not pass the legislative procedure. The tone of the campaign was marked by the controversy around the participation of the FARC and the generalised opposition to the corruption of the political system.
- In general, candidates were able to carry out their campaign throughout the territory without major restrictions on their rights to assemble and move, despite serious incidents, especially the harassment of the FARC candidates and, to a lesser extent, of the other parties. The campaign showed that the structural violence suffered by the country did not definitively end with the signing of the Agreement. The ELN attacks and the increase in the number of murders of social leaders were worrisome. The tone of the campaign was considered to be very harsh by most parties. The Procuracy revealed widespread non-compliance with campaign rules.
- The media covered the electoral campaign in a legal framework that offered extensive guarantees, despite significant vulnerabilities that affect the sector, such as threats to the physical integrity of journalists (which were significantly reduced after the signing of the Peace Agreement), sexual harassment to women journalists, alleged pressures from different instances of the State, aggressions of the public force and a non-transparent allocation of state advertising. It was especially worrying the role of social media was especially worrying, considering the lack of effective tools against the fake news it spreads.
- The management of campaign funding is considered to be a potential source of corruption in the political system, given the abundance of resources linked to illegal activities and corporate interests. The law provides reasonable legal instruments to face these problems. The resolutions of the National Electoral Council (CNE) represented an advance, due to the mandatory use of public telematic means, for parties and candidates to report their accounting movements and update them throughout the campaign. However, the lack of transparency in the accounts deprived Colombians of the opportunity to monitor the campaign funds. The control and supervision mechanisms applied proved to be insufficient to fight against illegal funding and non-compliance with campaign ceilings.
- The reliability of the census, estimated at over 36 million voters, was not a primary concern for the parties, despite the fact that it contains an undetermined number of people who have died or emigrated, and that it does not include almost 800,000 unregistered people. Although the Peace Agreement calls for the promotion of registration campaigns that prioritise the most marginalised areas, especially areas affected

by conflict, these campaigns have not been carried out. Another problem of the census is the existence of almost two million citizens who have not been assigned a polling station based on their residence, which could have affected their participation.

- The Congress is made up of 108 senators and 175 members of the House of Representatives, elected through a proportional system in which parties can contest with closed or open lists. In Colombia, open lists are questioned because they are understood to weaken the party system, harm the representation of women and contribute to the high number of invalid votes. The disparity in the number of voters per seat between the largest and smallest constituencies of the House of Representatives led to the debate on the creation of mechanisms to prevent disproportion from affecting the principle of equal voting.
- 16 parties, coalitions and movements promoted by significant groups of citizens participated to the Senate elections; there were 27 candidates for the House of Representatives. In addition, 42 Afro-descendants and 13 indigenous lists of candidates also participated. The lack of clarity regarding the legal status of the coalitions, the requirements for the acquisition or loss of the legal status of the parties and some grounds for ineligibility compromise the right to be elected and may discourage or limit political participation.
- In recent years, Colombia has made progress in seeking greater political participation from vulnerable groups. The electoral system sets a gender quota applicable to the lists of candidates and establishes special constituencies for indigenous and afro-descendants. However, the representation of these groups is still limited by the use of open lists, in the case of women, and by the remoteness of the polling stations of certain indigenous and afro-descendant communities, which would affect their participation.
- The elections are administered by the CNE, which is the regulatory and control body of the entire process, and the National Registry of Civil Status (RNEC or Registrar), which is responsible for electoral logistics. Additionally, both the Fifth Section of the Council of State and the Procuracy, Prosecutor, Comptroller and Ombudsman, among others, have relevant roles. The participation of so many institutions creates an electoral structure with an order of responsibilities that can be confusing. The Special Electoral Mission (SEM) proposed a new organisational structure to make the organisation of elections more efficient.
- The CNE magistrates are elected for a period of four years by the parties with a presence in Congress through a system proportional to their representation. The nature of its composition means that the independence of its decisions is questioned, particularly in matters that directly affect the parties, such as the monitoring and control of their electoral campaigns. Their tasks are made more difficult by the lack of territorial structure and budgetary independence.
- The political parties have had an acceptable level of confidence with respect to the RNEC to manage the electoral logistics, which was confirmed by the effective management of most of the processes for which it was responsible. However, some components of its management were questioned, such as the verification of signatures for the registration of nominations and the transparency of the transmission and announcement of preliminary results. The usual problems of long distances to polling stations in rural areas of the country also persisted. The European Union Election Expert Mission (EU EEM) considers that the regulation provided sufficient instruments to mitigate the problem.

- Election day was widely observed and passed without serious incidents, despite certain cases of pressure on voters and vote buying. During the voting, problems such as inadequate knowledge on how to mark the ballot came up, which could have been mitigated with voter information campaigns, and the insufficient training of the polling staff. Both circumstances, among others, contributed to the high number of invalid votes, characteristic of Colombian elections. The lack of ballots for interparty primaries in 26 polling stations required extraordinary measures and provoked complaints from the candidates. The Registry announced the preliminary results with over 95% of the votes counted on election night, fulfilling its objective of offering extensive information in a timely manner. The turn out was close to 49%, above the average of the last eight elections.
- According to the preliminary results, the Democratic Centre and Liberal Party were the most voted parties in the Senate and House, respectively. The announcement of the elected legislators is expected to take place shortly before their inauguration in July 2018, a term that excessively prolongs the uncertainty over who has been elected. Over 9 million people, which is more than half of those who voted in the elections, voted at the two interparty primaries, which Iván Duque and Gustavo Petro won.
- There is a network of civil society organisations committed to the quality of democracy in Colombia. The Misión de Observación Electoral (MOE) played an important role in the electoral reform project through its participation in the SEM, established by the Peace Agreement. In addition to investigating and publishing reports on different aspects of the electoral process, the MOE made a long-term observation. On election day, it deployed 3,398 volunteers in over half of the country's municipalities and 15 polling stations abroad. Transparencia por Colombia is an organisation involved in the fight against corruption which analyses compliance with regulations on political funding. Other sectoral organisations are concerned with the political participation of vulnerable groups.
- Broad sectors of Colombian society are convinced of the need for a comprehensive electoral reform that properly addresses the weaknesses of the electoral process. The areas identified as priority areas are political party funding, with special attention to the legal origin of their funds, electoral authority transformation, transparency strengthening and the internal democracy of the parties, gender parity and the protection of minorities. The start of a new legislature in Congress opens up a new opportunity to debate and agree on these reforms.

2. BACKGROUND

At the invitation of the National Electoral Council (CNE), the European Union (EU) sent an Electoral Expert Mission (EU EEM) to Colombia, made up of three members, to oversee the 2018 legislative elections. The mission of the EU EEM was to analyse the electoral process to assess its compliance with the international commitments entered into by Colombia. The EU EEM met with the electoral administration, civil society representatives, political organisations, the media and groups of national and international observers, among others. During Election Day, the EU EEM visited a limited number of voting centres in Bogotá.

3. CONTEXT OF THE ELECTIONS

The legislative elections on 11 March 2018 was the first electoral process held since the signing of the Peace Agreement between the Colombian Government and the guerrilla group FARC (Revolutionary Armed Forces of Colombia) in November 2016, which participated in the elections after its conversion into a political party. The Agreement, submitted for verification by a United Nations mission and backed by different international bodies, including the European Union, resulted in amendments to the Constitution and the approval of new laws to provide legal guarantees upon their implementation.

The elections took place in a climate of generalised rejection of the parties and political system. Disaffection is not new in Colombia and explains why the country has one of the highest rates of abstention in Latin America, with an average turn-out that has not reached 45% in the Congress elections held since the Constitution entered into force in 1991. The investigations that affected, according to civil society organisations, 84 of the 268 congressmen between 2014 and 2018, and the recent prison orders issued against some of them, pushed many candidates to fight against corruption, reinforcing the public perception of this problem as one of the biggest ones that afflicts Colombia's political system.¹

3.1 The Peace Agreement and Congressional Elections

From a strictly electoral point of view, the Agreement implied, among other things, the creation of the so-called Special Electoral Mission (SEM), whose mission was to draft a proposal for comprehensive electoral reform. The reform proposal of the SEM was reviewed by the Executive and sent to Senate for approval, where it was withdrawn in November 2017. The Agreement also stipulated the creation of 16 Special Transitional Peace Constituencies in the territories especially affected by the conflict, each of which would elect a member of the House of Representatives during two electoral terms. The districts did not pass the legislative process and were not created for the 11 March elections.

The most notorious consequence of the Agreement was the conversion of the FARC into a political party, a commitment that included public funding, the establishment of protective measures for its members and a minimum representation of five seats in the House of Representatives and another five seats in the Senate,

¹ According to a Gallup poll conducted at the end of February 2018, the percentage of respondents who considered the problem of corruption to be getting worse in the country had risen from 86% to 91% since December 2017.

spanning two legislatures, regardless of the result obtained in the election. The new party adopted the name Fuerza Alternativa Revolucionaria del Común (Common Alternative Revolutionary Force), maintaining its old acronym, and had a representative with voice, but no vote, in the CNE.

The electoral participation of the FARC was marked by controversy. The most critical parties of the Peace Agreement reported their campaign funding as favourable treatment of the party, in addition to the fact that the former guerrillas had not gone through the Special Jurisdiction for Peace (JEP), foreseen in the Agreement but not in effect on the date of the elections, before joining the political life. The FARC, in turn, reported the harassment of its candidates at several campaign events and the very late procurement of the amounts promised to fund it. These circumstances did not prevent the FARC from participating in the election, although its presidential candidate, Rodrigo Londoño, withdrew from the race on 7 March, in the middle of the legislative election campaign, claiming it was for health reasons and the problems they had to face during the campaign. The party did not replace him with another candidate.

3.2 Nominations

A total of 16 political parties attended the Senate elections. Among them, the eleven that already had representation in the Senate: the Social Party of National Unity, of President Juan Manuel Santos; Democratic Centre, which presented former President Álvaro Uribe as the head of the list, the Conservative Party and the Liberal Party, the two parties with the longest standing tradition in Colombia; Radical Change and Citizen Option, both part of the government coalition. On a spectrum that goes from centre-left to left wing, the following parties participated: Green Alliance, Alternative Democratic Pole, ASI, MAIS and Patriotic Union (the last three being members of the Decency List coalition), and the new FARC party. Among the other parties, it is worth mentioning MIRA, to which the State Council assigned three senators in February 2018 after reviewing the count of the 2014 legislative election. On March 11, two interparty primaries were held to determine presidential candidates. Any voter could participate in these primaries, provided they only do so in one of them.

4. ELECTORAL SYSTEM

In Colombia, Congress is made up of the Senate and the House of Representatives. Colombian citizens elected 102 senators (100 in a single national constituency and the two remaining in a special indigenous constituency) and 165 members of the House of Representatives, 161 in 33 districts, which coincide with the departments and Bogota, as well as four in three special districts for afro-descendant (2), indigenous (1) and Colombians living abroad (1). Additionally, the candidates for president and vice president who come in second in the presidential elections are assigned a seat in the Senate and the House, respectively. 5 seats must be added to the Senate and 5 to the House, guaranteed to the FARC for two terms. The congressmen are elected through a proportional system in which parties and movements may contest with closed or open lists. Of the 16 nominations submitted to the Senate, only three of them, SOMOS, Sí Se Puede and FARC, did so in a closed list.

In the Colombian political context, some parties and organisations consulted by the EU EEM question the open lists with the argument that they can weaken the political party system by starting disputes between candidates, harm the representation of women and can be confusing for less informed voters, thus contributing to a high number of invalid votes. They can also increase campaign costs, surpass the spending limits and encourage the search for funding in illicit sources.

The threshold for assigning seats in the Senate is set at three percent, which guarantees adequate representation and corresponds to good electoral practices to this respect.² The threshold in the House of Representatives varies depending on the number of votes in each departmental constituency. Each of these constituencies elects a minimum of two members to the House, a number that increases according to its population. Given that the last population census was conducted in 2005, the distribution of seats by constituency may not reflect the current population on the date of the elections. There is also a wide disparity in the number of voters per seat between the largest and the smallest districts, which varies between 316,132 in Bogota and 10,799 in Vaupés, which could affect the equality of vote principle included in the international commitments entered into by Colombia.³ ***The improvement of guarantees for equal suffrage in the House of Representatives elections can be considered in accordance with the international commitments entered into by Colombia.***

5. CAMPAIGN

The campaign began on 11 December in public spaces and two days later in the media. It ended on 4 March for public events and 48 hours before the elections for electoral publicity. However, closed-door activities could be held until the eve of the election and publicity was not stopped on social networks, where it is not expressly regulated. For a while, starting on 27 January, the legislative campaign was concurrent with the presidential campaign, which led to synergies and several joint events.

The media coverage and information provided to the EU EEM by the political parties indicate that it was a campaign in which the freedoms of movement and meetings of the candidates were generally respected, except for serious incidents, specifically the harassment of FARC candidates and, to a lesser extent, other party candidates. The parties attended debates organised by the media and civil society, and were able to hold mass rallies and other activities in various parts of the country, within the limitations imposed by the structural problems of violence (*see section 5.1 Electoral Violence below*). The majority of the parties with which the EU EEM met, however, defined the electoral campaign as one that had a harsher tone in Colombia's recent history. The official campaign period was preceded by the election of presidential candidates through internal elections and the obtaining of signatures from significant groups of citizens, an opportunity that was used by candidates to campaign outside of the established periods.

According to a report released in February 2018 by the Procuracy following random visits to 11 parties in different departments of the country, there was an extended breach of the campaign rules on outdoor advertising. The Procuracy pointed out the lack of control over the outdoor advertising from 76% of the candidates investigated and the lack of municipal and district permits to enforce it in 75% of the cases. The Procuracy did not disclose the names of the parties that failed to comply with the campaign rules, which limited the deterrent effect of the investigation.

² Report on Thresholds and Other Characteristics of Electoral Systems that Prevent Parties from Accessing Parliament. Paragraph 68. Venice Commission, 2010.

³ Paragraph 21 of General Observation 25 on the International Covenant on Civil and Political Rights (ICCPR, 1966) states that "within the framework of the electoral system of each of the States, the vote of one elector must have the same value as that of another".

By virtue of Guarantee Law of 2015, since 11 November 2017, openings, hiring and official publicity were restricted, among other activities of public powers, in order to guarantee equal conditions and the neutrality of public servants during the electoral campaign. Under this law, the Procuracy investigated the existence of a parallel payroll for electoral purposes in the National Learning Service to provide services unrelated to the original function of the entity. The Procuracy also opened 88 disciplinary actions against public officials for improper participation in politics (37), violation of the legal standards (27), participation in campaign activities or illicit pressures on voters (17) and the commission of electoral crimes (7).

In the municipalities visited by the EU EEM (Bogotá, Medellín, Cali, Barranquilla and Cartagena), advertising in public spaces was discreet. The political parties and movements stated to the EU EEM that this was due to two reasons: the limitations on the exhibition of campaign materials by local authorities and the lack of funding, which most parties considered to be scarce and dependent on arduous bureaucratic procedures. The parties also complained about the high cost of the campaign, which is usually borne by the candidates, as well as the very late receipt of the advances to pay for it.

5.1 Electoral Violence

Almost all EU EEM interlocutors agreed upon the improvement of security conditions after the signing of the Peace Agreement. The electoral campaign period showed, however, that the Agreement did not put an end to the different forms of structural violence suffered by the country, which continues to represent a potential threat to voters and candidates. Armed actors such as the National Liberation Army (ELN), dissidents of the FARC, Autodefensas Gaitanistas de Colombia and groups linked to illegal activities made an appearance during the campaign. What was particularly worrying was the activity of the ELN, which, after a year of peace negotiations with the government in Quito, infringed upon the security forces three times between January and March 2018, causing at least 13 fatalities, although it did not boycott election day.

In comparison with the 2014 elections, however, it also reveals an improvement in the general security conditions for the elections. According to the Electoral Risk Map of the national NGO Misión de Observación Electoral (MOE), published in February 2018, the number of municipalities at risk decreased from 260 to 170 between the 2014 and 2018 elections. In these municipalities, where 10% of the country's population is located, 35% of all victims of violence are registered nationwide.

The MOE, however, registered an increase in political violence as the elections approached, with almost one victim per day in the quarter prior to February 2018. From the beginning of the campaign to the date of the report, the MOE reported 62 acts of violence, half of which were homicides.⁴ The victims of these acts were political leaders, social leaders and members of communal boards, the basic administrative unit of the country. The political leaders mostly suffered threats or attacks, while the social leaders, especially the communal ones, were murdered in most cases.

According to the MOE, these violent acts usually occur in the former areas of influence of the FARC, where certain social demands remained private from their protection. In fact, 61% of the victims registered in the study are in these so-called post-conflict regions. Of the 13 victims with known political affiliation, seven

⁴ According to the Office of the Ombudsman, between 1 January 2016 and 27 February 2018, 282 social leaders were murdered.

belonged to the FARC, two were members of the Democratic Centre, the party most openly opposed to the terms of the Peace Agreement, and the remaining four belonged to four different parties.

At the beginning of March 2018, the Office of the Ombudsman also reported the increase in the number of homicides of social leaders and human rights defenders, and issued an early warning that obliged the State to deploy the Intersectoral Commission for Rapid Response. Paradoxically, according to the Ombudsman, the denunciation of these events could accelerate the execution of threats in certain cases, instead of protect potential victims.

There were several candidates who claimed to have suffered threats or explicit violence during the campaign. FARC reported the harassment of its candidate, Iván Márquez, and its presidential candidate, Rodrigo Londoño, to the Senate during events in different parts of the country. These events led them to temporarily suspend their campaign activities. On this occasion, the FARC accused the groups opposed to the Peace Agreement of being behind the incidents. Other parties were also victims of various types of threats and, in some cases, requested protective measures for their candidates. This was the case for MAIS, Patriotic Union, Democratic Centre and Decency List. The campaign activities of the heads the list to Senate of the last two candidates mentioned were affected by protests on 2 March in Popayán and Cúcuta, respectively. The Decency List reported to the Organisation of American States (OAS) and the Inter-American Commission on Human Rights (IACHR) that the vehicle of its presidential candidate, Gustavo Petro, was attacked on that occasion by a group of protesters. The ruling Party of the U also informed the EU EEM of the theft of computers at its headquarters in Bogota, as well as threats to supporters and the destruction of campaign materials in different parts of the country.

6. CAMPAIGN FUNDING

The handling of campaign funding is considered a potential source of corruption in the political system, given that control and oversight devices have proven to be insufficient in combating irregularities. EU EEM members saw and were concerned about the existence of resources coming from illegal activities or activities linked to business interests in electoral campaigns. Law 1475 of 2011 regulated the main aspects of the political funding and provided reasonable legal tools to combat illegal funding. This law, however, entails a series of regulations and fragmented judicial rulings, circumstances that limit stability and legal certainty to this respect⁵.

6.1 Funding Sources and Electoral Campaign Expenses

In Colombia there is a mixed system for political funding. Sources of private funding for Congress campaigns include self-provided resources, income from public events, credits, and loans, provided that they do not exceed the established spending limits. Donations from individuals or companies are allowed,⁶ with an individual limit of 10% of the total established for each election. Anonymous contributions are prohibited, as well as those coming from abroad and those from public officials or persons investigated in

⁵ In addition to the Constitution, the main regulations are the Constitution, Law 58/1985 and Law 130/1994.

⁶ According to the MOE, during the 2014 elections, 558 companies made donations to the legislative campaign, including the two main private media companies in the country, several companies dedicated to real estate or tourism development, companies in the financial sector and the provision of urban infrastructure services.

criminal proceedings for tax crimes, belonging to illegal armed groups or drug trafficking. The absence of restrictions on self-provided funding limits equality among the competition because it favours candidates with more resources. The possibility that non-profit associations linked to political parties can conduct parallel campaigns without following the political funding rules has been a cause for concern. The loopholes in the law also make it possible to evade the limits on contributions from individuals and companies that amortise the receivables without needing to declare them.

Public funding is based on the concept of replenishment per vote obtained⁷, which, for the 2018 legislative elections, was set at 5,642 Colombian pesos (approximately €1.5). Although the law establishes that the replenishment value is made within a month after the voting, in practice, the income becomes effective months or years later. Political organisations can request an advance of this replenishment for up to 80% of the campaign limit set for each election. At the end of this report, of the 10 parties that requested advances, only the Conservative Party was granted one. On the other hand, the FARC⁸ also received the advance payment, as stipulated in the Peace Agreement, after overcoming its difficulties in operating with a bank account⁹. According to the CNE, the rest of the parties did not receive the advances because they did not submit all the required reports. The political organisations indicated that the requirements were too complex, and included a bank guarantee or policy for 100% of the value of the advance in order to reimburse it if they did not obtain enough votes.

As a result, parties and candidates relied almost exclusively on their own resources and loans to cover their campaign expenses. Public funding therefore did not fulfil its purpose of creating fairer conditions for candidates and did not reduce the need for private funds that increase corruption opportunities. ***The EU EEM considers that the SEM recommendations regarding funding, for the functioning of the parties and the electoral campaign, are mostly relevant. For example, it would be important to establish stricter restrictions on private contributions, increase indirect public funding, and apply limits and controls on donations from foundations linked to political parties.***

The CNE established the spending limits of electoral campaigns.¹⁰ The political parties pointed out that the approved limits were below the actual expenses of the campaigns and demanded a calculation more in line with their actual costs. There is wide recognition that most political organisations exceed their spending limits.¹¹ However, this contradicts the data reported through the telematic application of the CNE's "Cuentas Claras" during the 2014 legislative elections, which revealed that not one had exceeded a third of the maximum limit, evidencing a clear sub-report of campaign funding. The open lists generate strong competition among the applicants in terms of funding and, therefore, a significant increase in campaign

⁷ Political organisations may receive public funding when they obtain at least 50% of the threshold determined for the respective election.

⁸ Within the resources corresponding to the new political party, 2,750 million pesos (approximately €775,000) were allocated for its operation with an advance of 9,582 million pesos (approximately €2,700,000) to fund the Senate campaign.

⁹ The banks refused to open bank accounts for the FARC because they were on the Clinton list or SDNT list of companies and people linked to money from drug trafficking around the world.

¹⁰ The campaign spending limit for the Senate was set at 88,413,216,314 pesos (approximately €25,000,000). The limit for each of the House of Representatives lists ranges between 1,384,434,705 pesos (approximately €390,000) and 18,464,035,346 pesos (approximately €5.2 million) depending on the number of citizens registered in each department.

¹¹ The spending limit for the Senate lists was 74,053,868,791 pesos (almost €21 million). Therefore, each candidate received around 740 million pesos (approximately €200,000). The UNDP estimated that, despite some cases in which the candidates claimed to not have spent up to the limit, those on open lists exceeded these limits. The average spending per candidate in a Senate campaign was estimated at around \$3 billion (approximately €800,000).

costs which, combined with the difficulties in controlling income, could lead to possible abuse and corruption.

6.2 Disclosure and Reporting

Colombian legislation requires candidates and political organisations to publicly render electoral campaign accounts. The reports must justify the income and spending, both in cash and in kind in their commercial value, as well as the amounts of the loans and information of those who granted them.¹² The deadline for submitting the reports, which must be accompanied by an audit of the parties, is two months after the elections. If they are not presented, the parties are subject to administrative and criminal sanctions. Lists that exceed an expenditure of 200 minimum wages must designate a manager responsible for the finances of their respective campaign. The law requires that the income and expenses be channelled through a single account. Stakeholders have indicated to the EU EEM that the political organisations and candidates perceive the presentation of the financial reports as a procedure to be entitled to funding from the votes received and that they only report what can be justified with receipts. Since 2013, political organisations and candidates must update their campaign funding on an ongoing basis in an application called “Cuentas Claras”, which allows individuals to access the information.¹³

6.3 Supervision

As a body of control and audit over electoral campaigns, the CNE oversees the financial reports of the political organisations and the media on contracting publicity. Among the applicable sanctions are warnings, fines, suspension or cancellation of state funding, loss of investment and suspension or termination of the legal representative of the party. The recent amendments to the Criminal Code introduced criminal sanctions, which must be imposed by ordinary courts, for non-compliance with the spending limits, acceptance of illegal donations or omission of information from the contributor.

Although the law allows the CNE to conduct audits on income and expenses at any time, in practice, its means are limited by the lack of technical, operational, functional and budgetary resources, as well as by its lack of offices in the departments. Another obstacle when inquiring about the origin of resources is that most of the expenditure occurs in cash and many of the donations are made in kind, alluding to a market value much lower than the real one. The CNE also does not have the power to lift banking secrecy. For supervision, the CNE is limited to carrying out a formal review of the financial reports, which results in an ineffective system.

The CNE and Procuracy agreed to conduct joint audits on a pool of candidates. Following 37 inspections of candidates from 11 political organisations in various departments of the country, the Procuracy reported several cases of non-compliance with campaign funding rules on 11 February. The report revealed that, three weeks after the end of the campaign, only 25% of candidates had their accounting updated. Additionally, 62% of the candidates inspected had not opened the required bank accounts and 70% did not manage their income through a single bank or even personal account. Candidates who had opened a bank account only used it occasionally. The report indicated that all the audited campaigns had difficulty opening accounts as banks were reluctant to open them for fear they would handle illicit money. Some

¹² Regulated by Law 1475 of 2011 and Resolution 3097 of 2013.

¹³ Resolution 3097 of 2013 of the CNE establishes that candidates must register their accounting entries in the Income and Expense Books within eight days following the day of the transaction. This information must coincide with that registered in “Cuentas Claras”.

candidates had not registered a campaign manager with the electoral authorities. Of the 37 candidates audited, only 12 had used the application to establish the origin of the funds used.

Following this report, the Attorney General said that there was “a severe and worrisome breach of the electoral rules by most political parties.” However, no CNE measures were verified. At the time this report was written, no more information on inspections was made public. Since the adoption of the Law of 2011, no sanctions have been applied to candidates or parties for infringing funding regulations in legislative or presidential campaigns. The lack of sanctions compromises the purpose of discouraging irregularities in funding. Law 1864 of 2017 penalised infractions of the legislation on funding and its implementation is expected to increase investigations and sanctions on this matter. ***Candidates should be required to publish their financial reports during the election campaign, for the sake of public examination, as well as to ensure that all infractions on the funding of political parties are effectively sanctioned.***

The widespread concern about political funding requires the adoption of urgent measures to improve transparency and strengthen the control of electoral campaign funding. These should include the approval of necessary legal tools, the development of an autonomous and operational control unit, and the identification of strategic areas that will have a positive impact in the upcoming elections.

7. MEDIA

Colombia has an extensive network of social media, which includes two national newspapers, local press in the major cities, radio and television stations broadcasted nationally, departmentally and municipally, both publicly and privately owned, and websites on political information. The legal framework under which these media develop their activities is generally considered protective by journalists, professional associations and groups that defend freedom of the press. The Constitution establishes freedom of expression, prohibition of censorship and the right to receive truthful and impartial information. This latter right is accompanied by the right to submit requests to authorities and to access public documents, except for those expressly excluded by the law, and is regulated in the Transparency Law of 2014, pioneered in Latin America, which includes political parties as subjects with information obligations. Finally, the Ministry of Information Technologies and Communications regulates the radio spectrum and is responsible for granting broadcasting licenses, which imply economic considerations and public service obligations.

Journalist activities are not exempt from weaknesses. The first and most important is that which affects the physical integrity of journalists. Even though the media and journalists contacted by the EU EEM estimated that the threats and assaults have decreased significantly since the signing of the Peace Agreement, in 2017 they killed indigenous journalist Efigenia Vásquez in Cauca and the Foundation of the Freedom of the Press (FLIP) documented 310 assaults against journalists and media, which range from threats to kidnapping and physical violence. Secondly, according to FLIP, the relationship between the press and public powers also compromises the exercising of freedom of the press due to insults, reporter and media stigmas, demands to reveal sources or issuance of arrest warrants for alleged crimes of libel and slander. The main consequence of these pressures is self-censorship. FLIP also lists, among other threats to journalist activities, sexual assaults to female journalists, which have begun to break their silence with public allegations, assaults by members of the public forces towards journalists that report about protests,

and opaque distribution of the State's publicity guideline, which can serve to reward or punish the media, and compromises its economic solvency.

7.1 Access to Media in Election Period

The Constitution recognises for the political parties that have political persons the right of access to radio media during the election campaign and Law 1475 from 2011 establishes the details for accessing from two months prior to the election date until 48 hours before the election. Through resolutions issued for each election, the CNE establishes the number and duration of free spaces for all the nominations proportionally to the number elected in previous elections, as well as for the promoters of blank ballots, both in public and private media, and assigns them by lottery during prime time, when there is high audience. The nominations may purchase additional spaces in audiovisual and print media, but their quantity is limited by duration and size of the municipality in which they are spread. This caption can also not exceed 20% of the expense authorised to the nomination.

The EU EEM has received complaints from the parties with less resources about their inability to purchase advertising in the media. However, not everyone took advantage of the free spaces that the media provided during the campaign. On the other hand, the parties that have more economic means complained about the expense limits, which they consider insufficient to make a successful campaign and, in their opinion, obligated them to violate the limits. This worrisome verification of non-compliance with the campaign rules has support in the estimations of the NGO Transparency for the legislative elections of 2014, according to which, the parties invested an average of 42% of their resources in election advertising, more than double that authorised by the law, a confession that reveals the absence of reliable mechanisms for accountability and control.

In terms of media coverage, at the time of writing this report, there is a lack of statistical evidence on the quantity of information and the media bias in campaign coverage, of which the parties frequently complain. A shortage that can be quantified concerns local information, which according to FLIP, affects 29% of the Colombian population, which does not have their own media for each geographic area. This deficit is particularly significant in the elections to the House of Representatives, in which seats are chosen at the departmental level.

7.2 The Role of Social Media

The growth of communication technology and its extensive use during the election campaign mark a great difference between the elections of 2018 and 2014. Colombia is one of the countries with the highest number of users of new communication technologies in its region.¹⁴ During the campaign of the legislative elections in 2018, the spreading over the Internet of fake news relating to political parties and candidates and to the electoral process caused a large worry, an event without precedent in previous electoral processes. Hoaxes and rumours are frequently re-sent by users without questioning them and even echo in the social media, which multiplies their effect. The most difficult rumours to combat were those that circulated among closed groups of social network users such as *Whatsapp*, since they are only visible among the members of these groups. For example, during the legislative elections fake news or false

¹⁴ According to information from the Ministry of Information Technologies and Communications for 2017, of Colombians between 16 and 70 years old, 97% are *Facebook* users, the most popular social network, and every two out of three homes have phones with the ability to connect to social media. See Major Survey TIC/2017 <http://colombiatic.mintic.gov.co/602/w3-article-57508.html>

information circulated through social networks such as that the pen ink used to mark the ballot disappeared or that only the ballots marked with pens from the Registry would be valid.

Various media made emails or official social media accounts available to citizens to send messages spread throughout the networks and check their veracity. These type of initiatives are commendable, but are not sufficient in view of the size of the problem. ***It would be advisable that the public powers, in particular the electoral authority, hold educational campaigns, maybe in collaboration with the Ministry of Information Technologies and Communications, to teach Internet users, particularly younger ones, what the keys are to distinguishing between truthful information and false information, and prevent them from collaborating in the spreading of the latter, preventing them from spreading and asserting them as true in public opinion.***

As the Colombian media associations and associations defending freedom of expression already warned, it is necessary to give preference to educational means and resist the temptation to over-regulate social networks, because regulation is shown to be inefficient in combating the problem, it could enter into conflict with the right to freedom of expression and face huge difficulties in its application, given that it can affect computer servers that are outside the country's jurisdiction.

8. ELECTORAL CENSUS

Citizen status is acquired at eighteen years old and it is necessary to be able to vote. Members of the military, active duty Police members and people that are ineligible due to a court ruling cannot exercise the right to vote. The Constitution establishes that participation in public issues is a citizen's right, despite this, voting is not mandatory in Colombia. Registering in the electoral census is done automatically when you are issued your identity card. At that time, the voter is assigned to a polling station near their declared place of residence, except for those that obtained their ID card between 1988 and 2003, which were located at that time at special polling stations called census-polling centers. Citizens living abroad must register in embassies and consulates. The identity card is the only valid document for voting.

The electoral census for the elections on 11 March was 36,025,318 voters, of which 720,259 corresponded to the constituency from abroad¹⁵, which could vote in 103,343 voting tables in Colombia and in 69 countries¹⁶. Even though its reliability has not been a primary concern for the parties, the organisations and parties consulted by the EU EEM consider that the census carries an uncertain number of dead persons or emigrated persons and does not include almost 800,000 persons that do not have ID cards. This latter figure, recognised by the RNEC, is unequally distributed throughout the territory and is between 15% and 18% of the population in some remote departments, such as Guainía, Vaupés and Amazonas, and fluctuates between 20% and 50% in almost one hundred municipalities¹⁷. Even though the Peace Agreement tries to promote massive ID card campaigns that prioritise urban and more marginalised rural areas, especially those areas affected by conflict, these were not carried out. ***With the aim of having the***

¹⁵ This figure is ten percent more than the census for the legislative elections of 2014, which had a total of 32,803,324 voters.

¹⁶ A total of 1,174 voting tables were installed in consulates and embassies abroad. Given the high number of registered voters, they could also vote in other places in Spain and the United States.

¹⁷ Source: Maps and electoral risk factors. MOE, 2018.

most inclusive census possible, the ID card issuance campaigns should be increased in those areas between those population segments most affected by low levels of identity cards.

Despite the fact that the number of voters assigned to census-polling centers has been decreasing significantly in recent years, the electoral census still includes 1,893,116 citizens (5.2% of the total) in this situation, distributed in 116 stations throughout the country. This percentage is increased to 8.2% of the census in Bogotá, where the only census-station of the city held 469,320 citizens, disbursed in 394 voting tables. The EU EEM checked that the participation in many tables of the census-station in Bogotá did not reach 15%, much lower than the national average¹⁸. The RNEC reported to the EU EEM that they held specific campaigns so that these voters would report their electoral residence and be reassigned to polling stations near their address. The concentration of these voters in a single area of major cities did not favour their participation and could result in a significant abstention greater than the national average. ***It would be advisable that the electoral authorities prioritise informational campaigns so that these voters declare an electoral address and assign them a polling station depending on the address declared. At the same time, the electoral authorities could divide the larger census-polling centers into smaller stations and be better distributed in the major cities to facilitate the voting of these voters.***

The law allows changes of electoral residence up to two months before each election. Almost two million persons (1,925,024) declared changes during the period enabled to do so¹⁹ in one of the 10,755 registration stations that the RNEC made available to voters. Since there is no clear definition of electoral residence and the voter does not have to present any accrediting document, changes in residence can give rise to fraudulent practices. According to the members of the EU EEM, in these elections the fraudulent registration of residence changes and, as a consequence thereof, the change of voting centre was linked to vote trading. The affiliation of voters to a reduced number of polling stations facilitates its control and makes them dependant of those who have bought the vote to move to the election day to the polling station where they are registered, which could be far in some cases from their place of residence. ***The requests for change of electoral address should have included probative documents of effective residence, such as receipts from public services or the housing rent contract.***

Vote trading is mainly located in rural and marginalised urban areas with elevated poverty indices. However, despite the fact that it is a widespread and recognised phenomenon, there is no data on its magnitude. Additionally, the electoral authorities have not held information campaigns on vote secrecy that would have allowed the electorate to be informed about the guarantees that exist for its exercising. The fraudulent change of electoral residence, a phenomenon known as electoral transhumance, is a crime. Specifically, according to the MOE, in 141 municipalities there was a total of 164,412 more registered voters than habitants, which created suspicions²⁰. This excess of voters could also be due to other causes such as that the population census is outdated or the existence of citizens that register their ID cards in different municipalities than their residence for work or safety reasons. ***Political parties must develop new mechanisms to attract support from the electorate without needing to resort to buying votes. The***

¹⁸ The check was done from the results protocols uploaded to the RNEC website.

¹⁹ These registrations correspond to residence changes since the last local elections in 2015.

²⁰ The estimated number of habitants in these municipalities is 1,408,211 people, according to the census estimation of 2018, while the number of registered voters was 1,572,173. In 62 municipalities, the difference is greater than 10%. Among those there are nine with a difference greater than 30%. Even though the large majority are municipalities with an electoral census of less than 10,000 voters, in 32 of those this figure is exceeded (Envigado, 238,221; Los Patios, 80,482, and Sabaneta, 67,121, among others). 50% of the 141 municipalities are concentrated in four departments (Antioquia, Santander, Boyacá and Cundinamarca).

application of control and sanction mechanisms must be accompanied by information campaigns on the guarantees of exercising vote secrecy, among others.

9. CANDIDATE REGISTRATION

The right to present lists of candidates is recognised by the parties and political movements and the Significant Groups of Citizens (SGC), except for congressmen of the special constituencies of ethnic minorities that are endorsed by their own organisations. Political parties obtain or maintain their legal status by obtaining a seat in the House of Representatives or at least three percent of votes in the elections to the Senate, a threshold that was fixed in 2013 to reduce the quantity of political parties. For this reason, various parties could lose their legal status in the elections for Congress. ***The EU EEM considers it important that very drastic requirements are not established, since they may discourage or limit political participation.***

An amendment to the Constitution in 2015 allowed the registration of coalitions for Congress for the first time. In total there were 17 registered coalitions: one in the Senate and 16 in the House of Representatives. The registration of coalitions created debate in the CNE since the constitutional precept was not developed in a statutory law. The revoking of these coalitions would have implied the disqualification of 170 candidates. Finally, the CNE decided to register the coalitions. The EU EEM considers that this decision is in agreement with the international commitments of Colombia that protect the right to be elected. ***It would be necessary to comprehensively regulate the coalitions of parties and movements on all election levels via the statutory law.***

Another point of interest referred to the registration process of lists of candidates of the GSC. For the elections for Congress more than 140 registration requests were submitted, even though only eight of them had signatures and finally three passed the validation process.²¹ Even though the number varies depending on the population census, the maximum number of signatures required to register a candidate for Congress is 50,000, which is 0.13% of the census, a significantly more severe requirement for the GSC than for political parties.²² ***The possibility of establishing equal conditions for the submission of nominations by parties and the GSC should be considered.***

The process of collecting signatures was used as a demonstration of strength or to campaign early without the same financing controls that they had during the official campaign period. Additionally, the members of the EU EEM questioned the signature validation procedure. The RNEC received more than 17 million signatures both for legislative elections and presidential elections. It is worth highlighting that the GSC submitted a much higher number of signatures than that required by the law, something that could be explained by the lack of a deadline to correct errors or data. The Registry had one month to verify all the signatures and employed almost 700 people to do so. The decision of the Registry to review each and every one of the signatures submitted, including after reaching the number of valid signatures required, caused an unnecessary overload of work and resources. Only one of the GSC exceeded the threshold in the House

²¹ Article 9 of Law 130 from 1994

²² The smallest number of candidates among the lists for the Senate by a political party has 24 candidates. A GSC would need around 1,200,000 validated signatures to submit a list with that same number of candidates.

of Representatives (GSC Colombia Justa Libres political party), obtained a seat and thus acquired legal status.

The Constitution establishes different inabilities, for example that the candidates have been condemned to terms of imprisonment at any time, except for political or reckless crimes, have held certain public positions within twelve months prior to the date of the election, have been contractors of the State within 6 months prior to the date of the election, have lost the inauguration or have family ties with officials that exercise civil or political authority, as long as the case occurs in the same territorial constituency. There are also grounds for ineligibility arising from disciplinary sanctions imposed by administrative authorities.

The grounds for permanent ineligibility question the international commitments of Colombia in relation to the right to be elected, obliging that the limitations of political rights arising from sanctions be of a judicial nature and be of limited duration and proportional to the crime²³. The electoral good practices suggested that long-term inabilities are limited to very serious crimes such as crimes against humanity, genocide, terrorism, murder or serious corruption or election crimes.

At the end of the process a total of 2,967 candidates were registered on 16 lists for the Senate and 356 lists for the House of Representatives before the Registry. Once registered, the lists were issued both to the CNE and to the Procuracy, the Comptroller and the Prosecutors that verified if the candidates met the requirements, the provisions on conflict of interest or they checked that they did not have any of the established grounds for ineligibility. Additionally, any citizen could request that the CNE revoke the registration. In the legislative elections of 2018 there were 51 revoked candidates (*see, below, section 17 Election Resources*).

Law 1864 from 2017, which amends the Penal Code, categorised the illicit election of candidates and established fines of up to 800 minimum wages (equivalent to €175,000) and prison sentences for up to 9 years and inability to hold public positions for up to 20 years for those elected candidates that are disqualified due to judicial, disciplinary or fiscal decision. Additionally, the parties are legally obligated to prevent the participation of disqualified candidates and have responsibility over the financing of their campaigns. The State Attorney General's Office established the Information System of the Sanctions and Disqualification Causes Registry (SIRI) as a mechanism for obtaining information prior to the registration of possible disqualifications on the lists. They received queries on 1,670 registered candidates.

10. ELECTORAL ADMINISTRATION

The elections in Colombia are administered by the CNE and the RNEC. The CNE is an administrative body that has regulatory and control functions over the entire electoral process, including financing and operating political organisations, resolution of electoral resources, and the revision of ballots and statement of results.²⁴ The RNEC is in charge of the entire election organisation, voter and candidate

²³ Article 23(2) of the American Convention on Human Rights establishes reasonable limitations for the participation of citizens in the management of public issues, directly or by means of freely elected representatives. This includes limitations for reasons of age, nationality, residence, language, education, civil or mental capacity, or conviction by a competent judge in criminal proceedings.

²⁴ Article 265 of the Constitution. Decree 1475 of 2011.

registration, electoral census development, and the scrutiny and transmission of preliminary results. To do so it is supported in a wide departmental and municipal structure permanently. Other institutions of the State, such as the Fifth Section of the Council of State, which decides on resources against CNE decisions, the Procuracy, the Prosecutors, the Ombudsman Office, the Interior Ministry, the Army and the Police, among others, they have significant roles in managing and controlling the electoral process. All of this forms an election structure that could be confusing, given the participation of a significant number of public institutions with duplicated responsibilities in some cases.

All of these bodies, plus the political parties and the MOE, come together in the committees and subcommittees of Electoral Monitoring created at the national, departmental and municipal level to coordinate and decide on logistics and security activities. These committees are headed at the national level by an Interior Ministry, while at the lower administrative levels they are headed by the departmental and municipal authorities. However, some organisations reported to the EU EEM that these committees could be underestimated by the parties as a useful tool to create trust in the correct election organisation. For election day the RNEC appoints a jury, in charge of managing the voting and counting from the lists of citizens provided by public institutions, private companies and political parties. According to RNEC, it is necessary to ensure that the tables are not entirely filled with people related to a single party.

The nine judges of the CNE are elected for a period of four years by the parties with a presence in the Congress via a system proportional to their representation. The nature of its composition means that the independence of its decisions is questioned, particularly in issues that directly affect parties such as monitoring and control of their election campaigns. Also the small parties consider that the CNE favours large parties more. The CNE lacks territorial structure, budgetary autonomy²⁵ and necessary staff, which hinders the fulfilment of its functions. The Special Electoral Mission proposed a new organising structure to provide better efficiency to the election organisation. ***It would be desirable that a future electoral reform include a body for electoral monitoring and control, in which technical and professional criteria are prioritised in selection and appointment. This body should have budgetary autonomy and territorial structure, necessary for fulfilling its functions.***

10.1 Assessment of the election organisation

The political parties have had acceptable confidence in the capacity of the Registry to manage the election logistics, which was confirmed by the efficient management of the majority of the processes of those for which it was responsible. However, some components of its management were questioned, such as signature verification for registration of nominations and transparency of the transmission and announcement of preliminary results. The RNEC selected and trained almost 700,000 people that acted as polling staff and installed 11,231 stations and 103,343 voting tables, which translated into an appropriate administration of the elections. Likewise, the RNEC provided more than 10,000 biometric identification devices in 803 polling stations in 22 departments, located in areas with high risks of irregularity, to guarantee the correct identification of voters and prevent identity theft. However, the design of the election ballot was not easy to understand, when including up to three constituencies (departmental, indigenous and afro-descendants) on the paper for the House of Representatives. This circumstance may be at the root of the high number of invalid votes registered in the elections.

²⁵ Even though the Constitution guarantees the administrative and budgetary autonomy of the CNE, it still has not been regulated, because it depends economically on the Registry.

The RNEC installed polling stations in the 18 new townships (municipal subdivisions) created since the last elections in the departments of Antioquia, Bolívar, Chocó, Córdoba, Magdalena and Sucre. However, according to the MOE, 300 population centres still exist without polling stations in areas with difficult access. This circumstance could potentially come into play in the effective exercising of the right to vote by electors in those areas. The Electoral Code establishes a maximum of one polling station per township, regardless of its size or population, therefore the possibility of installing new voting tables is linked to the creation of new townships. This prevented increasing the number of polling stations to make them closer to the voters that live in remote areas, as established in article 2.3.2 of the Peace Agreement. However, the EU EEM considers that the law allowed the adoption of measures to make voting possible for the habitants of these remote areas. ***It would be desirable to disconnect the creation of new polling stations from the development of the administrative organisation of Colombia, which would allow the RNEC to increase the number of polling stations in rural areas and facilitate the effective exercise of the vote.***

Some political organisations questioned if the RNEC could subcontract private companies that are key elements of the electoral process, among those the system for transmission and announcement of preliminary results. This questioning was based on two motives: firstly, the RNEC prevented the parties from performing an entire audit to the transmission of results, upon being the system and the software used property of the contracted companies, which increased distrust of some parties in the system of preliminary ballots in the weeks prior to the elections. The RNEC indicated that the political organisations could audit the systems as long as it did not imply their manipulation, since this in their opinion, could have generated even greater suspicions. Additionally, the Procuracy reported to the EU EEM that it was expected to inspect the operation of the system throughout the entire process of transmitting results. However, an audit of the system was not performed since in these elections the Procuracy did not receive the source code. Secondly, in the elections of 2014 there was a difference of three percent between the preliminary ballot²⁶ and the final that created suspicions of irregularities in the system that were in part confirmed by the sentence of the Fifth Section of the Council of State on the Mira case. There could also be human errors in transmission not necessarily attributable to manipulation. The resolution of resources in the final scrutiny process may also change the preliminary result.

This distrust was increased after the sentence of the Fifth Section of the Council of State on the MIRA party (*see section 15 Transmission of Results and Final Ballot*). In this sentence, the Council of State recommended that the Registry acquire a software that would allow it to have complete control on the ballot process from the voting table level to the announcement of results. However, the RNEC declared that this part of the sentence was difficult to implement, given the lack of material, human and economic resources to have IT and software systems for individual ballots, updated for each election. ***The EU EEM considers confidence to be a fundamental element for the legitimacy of the electoral processes and that, in this case, it could have been achieved by hiring an independent professional auditor whose results were disclosed opportunistically.***

Several parties declared to the EU EEM that an electronic voting system would end distrust in the transmission and scrutiny of results. Electronic voting is provided for in the Constitution since 2003 and was developed by law in 2009 and 2011. Despite the fact that in 2014 the Government announced that electronic voting would be a reality in Colombia in 2018, this was not implemented in the legislative

²⁶ Taking the number of valid votes in the legislative elections of 2014 as a base, this incorrectly computed three percent is approximately half a million votes, which could affect the correct attribution of seats.

elections and will not be implemented in the presidential elections. In the past they did pilot tests, mainly in local elections, even though they were not initiated due to a lack of economic resources and political differences that have delayed its entry into force.

11. PARTICIPATION OF VULNERABLE GROUPS

11.1 Women's Participation

Law 1475 from 2011 introduced a minimum of 30% of women as a requirement for the registration of lists of candidates where 5 or more seats are chosen. However, this quota was not translated into greater political representation of women. The preliminary results indicate that 56 women (an average of 20.8% in the two chambers) will occupy seats in the next Congress, which has a representation almost equal respect to the legislature of 2014, in which women occupied 21% of the seats. The Inter-Parliamentary Union put Colombia in position 104 of 194 countries, under the regional and world average in terms of female representation.

On the other hand, the law requires political organisations to designate at least 15% of public financing to the effective inclusion of women, young people and ethnic minorities in politics. However, the application “Transparent Accounts” revealed that during fiscal year 2017 only 2.5% of state financing to parties was invested in strengthening the participation of women. In accordance with the EU EEM, the CNE has not exercised control on the use of financing for this purpose nor monitored the differences in the economic support among male and female candidates, and therefore has not taken measures in this respect. The constitutional amendment of Balance of Powers from 2015 established that the nominations for popular election committees must be governed by principles of parity, alternation and universality, which have still not been regulated. **Authorities should have increased their efforts to ensure equal participation of women and men in the electoral process. It should encourage political parties to adopt more measures in favour of greater participation of women both in the party activities and in the quality of candidates.**

In general, the political parties have not established internal quotas that encourage participation of women, which greatly limits their opportunities to access decision-making positions within the party. With respect to the election administration they have not encouraged policies for hiring women nor designation of management positions.

As a positive development, the Registry has separated the election data by gender for the first time. The political organisations registered a total of 927 candidates on 16 lists for the Senate, of which [missing text] are closed and 11 are open. The lists with a greater proportion of women were those from the MIRA party, with 62%, Sí Se Puede (50%), the Unión con Fortaleza (40%) and the Partido de la U (37%). The 12 remaining lists had percentages of women participation between 30% and 35%.

11.2 Participation of the Indigenous and Afro-descendant Population

The total number of Colombians that were declared indigenous or afro-descendants of the entire population of the country was between 4% and 11% respectively.²⁷ The law specifies that the indigenous candidates that aspire to be elected in the special constituencies must have exercised a position of

²⁷ Data from the general census of 2005 in which it included a box for ethnic self-recognition. Other studies raise the afro-descendant Colombian population to almost 30 percent of the entire country.

traditional authority or have been organisation leaders. The afro-descendant candidates must be endorsed by one of their 234 Community Councils. Both the indigenous organisations and the afro-descendant organisations must be accredited before the Interior Ministry. Parties, political movements and significant groups of citizens cannot submit candidates in these constituencies.

A total of seven nominations for the Senate and six for the House were submitted in the special indigenous constituencies. A total of 42 candidates were registered for the special afro-descendant constituency in the House. The indigenous and afro-descendant voters can choose to vote for the lists for the national and departmental constituencies of the Senate and House or for their special constituencies. Some groups of afro-descendants say that some afro-descendant nominations do not have a real connection with their communities. In accordance with the preliminary results, approximately 160,000 electors voted for indigenous nominations and approximately 222,000 for afro-descendant nominations.

Various indigenous and afro-descendant organisations said to the EU EEM that their voters are highly sensitive to patronage of vote trading by parties and candidates, given their indices of poverty and social marginalisation. In this respect, there are no specific campaigns of the electoral authorities in which that they are alerted of these practices or of the guarantees that safeguard vote secrecy. The indigenous and afro-descendant communities suffered even more problems of access that could affect the effective exercise of their right to vote. Thus, 65% of the indigenous reservations and 43% of the afro-descendant community councils are in one of the 360 municipalities of the country with difficult access to polling stations.²⁸ (See section 10.1 Assessment of the Election Organisation)

The non-implementation of the 16 transitory constituencies established in the Peace Agreement especially affected indigenous and afro-descendants, since 45% of the reservations are found in these, which encompass almost a third of the indigenous population of the country, and 71% of the afro-descendant community councils.

11.3 Participation of People with Disabilities

The Electoral Code indicates that the voters that need it may be assisted to vote by a confidant. The polling staff, election witnesses, public force and officers of the RNEC cannot exercise this function. The law does not limit the number of voters to which the same person may attend, which could open the door to possible constraints and violations of vote secrecy for people with disabilities.

The RNEC included Braille templates so that the people with visual disabilities could vote without needing assistance, which allowed them to vote on equal terms. However, the Registry did not initiate measures to improve accessibility to polling stations for people with reduced mobility. In this respect, authorities have not implemented all the recommendations made to Colombia by the United Nations Committee on the Rights of People with Disabilities²⁹, whose objective is to ensure that the procedures, facilities and election materials are accessible to all voters, both in urban and rural areas. ***As a signatory country of the Convention on the Rights of People with Disabilities (CRPD), Colombia must guarantee that voters with disabilities can exercise their political rights on equal terms with the rest of voters, particularly in terms of vote secrecy and accessibility to voting tables. This also includes Colombians with mental or cognitive disabilities that due to judicial decision cannot exercise their right to vote.***

²⁸ The MOE defines municipalities with difficult access as those that have an average polling station every 786.8 km².

²⁹ Final observations on the initial report of Colombia. Committee on Rights of People with Disabilities. August 2016.

12 ELECTORAL REFORM

In recent years various reforms have been implemented to the electoral system that included constitutional amendments to eliminate the presidential re-election and to modify the composition of the Congress after incorporating the FARC (Revolutionary Armed Forces of Colombia) into political life. In April 2017 the so-called Opposition Statute was approved, Law 03 from 2017, which increased the prerogatives of the opposing parties, such as their participation in parliamentary boards, access to media and official documentation, as well as an increase in political financing. In August 2017 the Penal Code was reformed to categorise non-compliance of rules on financing and voter registration fraud as crimes, also strengthening the sanctioning regime.

After signing the Peace Agreement, in the beginning of 2017 a comprehensive electoral reform process was initiated demanded by broad sectors of Colombian society. By virtue of the agreement, the Special Electoral Mission (SEM) received the order to propose recommendations to give greater autonomy, independence and transparency to the electoral system, and favour political participation on equal terms. The SEM was formed with prominent personalities and organisations from the electoral field that included the MOE and the electoral authority, and had technical assistance from international organisations. The SEM met with practically all the political organisations and other players linked to the electoral process in search of the broadest possible consensus. On 17 April 2017 it submitted the final report to the government with recommendations, which affected the larger part of the electoral areas and processes.

With the aim of strengthening impartiality, autonomy and efficiency of the electoral bodies, the SEM posed the improvement of technological and procedural abilities of the RNEC and the implementation of the administrative career in the institution. The SEM also proposed creating a non-partisan Colombian Elector Council, with budgetary autonomy and territorial decentralisation, whose main functions would be regulating, monitoring and controlling the electoral processes and promoting democratic participation, as well as creating an Electoral Court in which the electoral jurisdiction would fall.

The SEM also proposed a series of mechanisms to increase public financing, give greater transparency and efficiency to its control, establish new prohibitions to their financing sources, fix limits on absolute values, create a more severe sanctioning regime and establish new guidelines for advertising and accountability. With respect to the electoral system, the project proposed to reform Congress by, among other measures, eliminating the open lists with the object of strengthening the parties, improving political and territorial representation of the vulnerable groups and discouraging patronage. Eliminating the open lists would have to be joined to regulation amendments to improve internal democracy of political parties.

12.1 Electoral Reform Process

Based on these recommendations, the Government developed the Legislative Act bill for Political and Electoral Reform. The bill broadly coincided with the proposal from the SEM, particularly in the chapters on political financing, parity, alternation and universality in political participation of women, eliminating the open lists and reforming the CNE. The differences affected other aspects such as the grounds for ineligibility and investment loss, participation in backer consultations or responsibility of political parties for the granting of endorsements.

The bill was submitted for its legislative processing via the fast track. This mechanism established that the reforms could only be modified with prior approval from the government and implied a severe reduction in parliamentary debates required for the legal reforms, as well as the approval of the bill in a single vote. However, the sentence from the Constitutional Court from May 2017 concluded that some provisions of the fast track established restrictions to the deliberate and decisive capacity of Congress. From then on, multiple proposals that undermined the SEM proposal were debated, such as eliminating some incompatibility causes, amendments to the investment loss causes of the congressmen or the inclusions of provisions that conditioned applying reforms to the Penal Code in terms of political financing. Other differences with the SEM proposal affected the electoral system design, territorial representation, financing control and political participation of women.

Finally, upon not achieving necessary consensus, the government removed the legislative initiative due to the fact that what was articulated in the Bill substantially modified the original proposal. Three months before the legislative elections, the Senate approved to withdraw the bill and postponed the debate for the next legislature. Various members have indicated that this is how they lost the opportunity to adopt a comprehensive reform, and that future debates could bring fragmented reforms. ***The EU EEM considers it important that the reforms made in the future take into account all the aspects of the electoral process that could be affected by the changes, and that they prevent straying from the regulatory framework.***

The members of the EU EEM, including the greater part of the political organisations and broad sectors of civil society, insisted on the need for a deep reform of the electoral regulations and that it respond appropriately to the problems that effect Colombian elections. The areas identified as priorities were financing of political parties, with special attention to the prevention of their illegal sources, transforming electoral authority, strengthening of transparency and internal democracy of the parties, gender equality and minority protection.

13 ELECTION OBSERVATION

In Colombia there is a network of civil society organisations that are committed to improving democratic quality. The Misión de Observación Electoral (MOE) played an important role in the electoral reform project via its participation in the Special Electoral Mission established by the Peace Agreement. The MOE made a long-term observation and public reports on different facets of the electoral process. On election day 3,398 members were deployed in more than half of the municipalities of the country and in 15 polling stations abroad. Transparencia por Colombia is an organisation involved in the fight against corruption that, among other things, reports on the fulfilment of political financing regulations. Other sector organisations are worried about the political participation of vulnerable groups in other issues.

The legislative elections were supervised by the Office of the Inspector General of Colombia, the Ombudsman Office and the Office of the Attorney General of Colombia, which deployed around 15,000 officers. In addition to the European Union, several international organisations have observed elections on 11 March, among them the Organisation of American States (OAS), the Inter-American Union of Electoral Organisations (UNIORE) and the Union of South American Nations (UNASUR).

14 ELECTION DAY

Voting was generally organised and peaceful, except for isolated incidents, mainly clashes between sympathisers of different nominations and some protests on local issues unrelated to the elections. Some cases of voters being intimidated into not voting in the elections was also reported. The elections were protected by 116,000 members of the Police and Army coordinated by the Interior Ministries and Defence in accordance with the “2018 Democracy Plan”, whose main goal is to guarantee the normal course of the elections.

The majority of the tables opened on time and had all their polling staff. The polling staff showed total knowledge of voting procedures, even though it was appreciated that they were less familiar with counting. The EU EEM observed the absence of witnesses from the majority of the parties at the voting tables. Some larger polling stations were in closed areas and did not make the accessibility of older people and disabled people easy. This was the case in the census-station in Bogotá, in Corferias, the oldest in the city. In some polling stations there was a certain agglomeration of tables, separated in many cases by less than one meter, which could have provoked overcrowding and disorder if there had been a high turnout. Despite the reduced space, the layout of the voting booths did not present a threat to vote secrecy.

Citizen complaints through the MOE website "*Pilas con el voto*" allowed cases of propaganda to be identified on election day at polling stations in Bogota, Santa Marta (Magdalena), Bello (Antioquia) and Turbana (Bolívar). Candidate campaign activities were also observed in the vicinity of the electoral precincts. The MOE found that a large number of electoral witnesses and even polling staff displayed partisan publicity. Additionally it reported that there were also cases of buying votes in public spaces near the polling stations in 74 municipalities in 22 departments. For its part, the Procuracy received a total of 290 citizen complaints, most of them due to voter intimidation, buying votes, propaganda and intervention of public servants in politics. The Prosecutor reported that on Election Day there were 26 arrests, mostly for crimes related to buying votes, voter intimidation and impersonations of polling staff and electoral witnesses. In one case, an individual was detained who was transporting 263 million pesos (approximately €75,000), supposedly to buy votes.

Colombians living abroad were able to vote in the 69 countries where polling stations were held. The voting was opened on 5 March and lasted until Election Day. According to the MOE observers abroad, the voting proceeded as usual, although an insufficient number of polling stations were noted in some cities such as London and Barcelona, especially on the Saturday before the Election Day.

The polling stations closed at four in the afternoon. The legislation does not allow people who are in line at that time to vote, which contradicts good electoral practices. Certain disorganisation in the polling staff was noted when following the counting procedures since these were distributed in an individualised manner without the collective management of the task being perceived. The regional and municipal vote counting committees began the official count on election night, which lasted for several days. However, it is forecast that there is a high number of appeals that the CNE will have to resolve in the final administrative instance in a process that could be extended for several months.

15 TRANSMISSION OF RESULTS and OFFICIAL COUNT

The Registry announced preliminary results with more than 95% of the votes counted before midnight on Election Day, fulfilling its objective of offering information as complete as possible in a timely manner. The results revealed a participation of around 49% in the elections to the Senate and the House of Representatives, almost five points above the average of the last eight legislative elections held in the country. With regard to interparty consultations, more than 9 million people, that is, a quarter of those registered and half of the voters, voted in one of the two consultations held.

The official count began on the same afternoon of Election Day and lasted for several more days. The results records were computed in the regional vote counting committees composed of two legal professionals (mostly judges) and a member of the RNEC as secretary, as well as witnesses of the political parties. At the next level were the general or departmental vote counting committees that consolidated the results records received from the regional committees. Two CNE delegates (mostly magistrates) and a RNEC representative formed these departmental committees. At the national level, the CNE magistrates formed vote-counting committees to compute the results of the vote abroad. The witnesses of the parties were able to attend all stages of the official count and file complaints they considered appropriate. It is expected that the announcement of results will occur shortly before the inauguration of the elected authorities, which creates uncertainty about who will be the elected candidates.

The Council of State ruling on the MIRA case revealed that during the 2014 elections there were a series of irregularities in the official counting process, including unjustified differences between the results records and consolidated results, irregularities in the systems of voting and transmission of results, and negligence in the custody of the electoral materials necessary for the investigation of the case, of which the CNE and the RNEC were held responsible. The ruling stated that all these anomalies "violated the constitutionally protected right to elect and be elected" and "adversely affected the principles of transparency, equality and freedom of the electoral system, violating the purity of the vote and the effectiveness of suffrage". The Fifth Section of the Council of State ordered the CNE to be assigned three seats in the Senate that had been assigned to other candidates, giving valid votes that had been annulled or incorrectly attributed.

It should be noted that there has been widespread confusion about the transmission program of preliminary results and the official count at the municipal, departmental and national levels. The preliminary results are not part of the official count. Its objective is to offer preliminary results to the public quickly. That is, they do not have legal validity over the assignment of seats.

16 INTERPARTY CONSULTATIONS

Interparty consultations are a right that the law grants to organisations to choose their candidates by popular election. The primaries in Colombia are open, meaning that all the electors can participate regardless of whether they were affiliated to the parties or not, although they can only vote in one of the

consultations. The popular consultations are voluntary and their organisation is financed through RNEC³⁰. Political organisations also receive public funding for their campaigns. The CNE set through a resolution the expenditure ceiling for the campaign of each pre-candidate at 6,058 million pesos (€1.7 million), which corresponds to 25% of the spending limit for the first presidential ballot, as well as the replacement value for each valid vote, which was set at 4,714 pesos (€1.3). The CNE also established the conditions of political propaganda both in the media and on billboards.

On this occasion, two interparty consultations were held. At the Great Consultation for Colombia, the Democratic Centre senator Iván Duque, the former minister Martha Lucía Ramírez, and the former Attorney General of the Republic Alejandro Ordóñez presented as candidates. At this consultation Iván Duque was the successful candidate, with more than 4 million votes (67.76% of the votes). Duque announced that Martha Lucía Ramírez would be his vice-presidential candidate. On the other hand, the Social Inclusion for Peace Consultation was determined between two left-wing candidates: the former mayor of Bogota, Gustavo Petro, who won with 84.7% of the votes; and the former mayor of Santa Marta, Carlos Caicedo.

The holding of popular consultations, both internal and interparty, was considered an important step in the democratisation of political parties in Colombia. They also served to attract the attention of the media and to measure the electoral strength. However, there have been numerous criticisms about the high cost of consultations within a context of discredited political parties. The interparty consultations of 2018 were held simultaneously with the legislative elections in order to increase their participation, which had traditionally been low³¹, and reduce the cost of their organisation.³²

One issue that was debated especially during these consultations was the possible entryism, meaning that voters vote for the rival candidate who they consider has less opportunity of winning the presidential elections. The presidential candidate Viviane Morales publicly denounced that some parties were spreading among their members the motto of voting for the weakest of the rival candidates in the interparty consultations. The electoral reform bill promoted by the government proposed that only members could participate in the respective consultations.

However, the decision of the RNEC to not digitise or publish the result records of polling stations on its website due to budgetary problems prompted the pre-candidate Gustavo Petro, of the Decency List, to file a complaint before the Inter-American Commission on Human Rights and the OAS. In addition, Petro filed a writ for the protection of constitutional rights against the CNE and the RNEC before the Administrative Court of Cundinamarca. It denied the petition due to formal issues, although it established that the witnesses had the right to receive copies of the counting records, among other guarantees of publicity and transparency. It is important to emphasise that the consolidation of the data of the count of the consultations transmitted during the electoral night was the definitive one. ***Given the difficulty of having***

30 Law 1475 of 2011 establishes that "The electoral organisation will collaborate to carry out the consultations of political parties and movements, which will include supplying the ballots or electronic voting instruments, the installation of polling stations and counting the votes".

31 Almost six million people voted in the Great Consultation for Colombia and more than three million voted in the Social Inclusion for Peace Consultation, that is, approximately 26% of the voters decided to vote in one of the two interparty consultations. In the internal consultations of the Liberal Party held in November 2018) only 2% of the registered citizens participated.

32 According to the RNEC the consultations cost 32 million pesos (just over €9 million) compared to the 400 million (more than €114 million) they would have cost if they had not been held simultaneously.

witnesses in each of the more than 100,000 polling stations in the country, and therefore obtaining copies of the results records, the only way that a candidate could have checked the result of a query would have been to download the scanned records from the Internet. The publication of the scanned records would have added transparency and confidence to the electoral process.

On Election Day it was reported that in some cases the polling staff suggested to the voters which consultation they should participate in or which candidate to vote for. More importantly, it was questioned whether they registered the names of the voters who participated in each consultation on separate lists. **The EU EEM considers that this register provides information on the political preferences of voters and should be guarded in a manner that guarantees confidentiality.**

However, the incident that caused more public controversy was the lack of ballots in 26 polling stations in the main municipalities of the country. This led to the implementation of the Registry's contingency plan and the use of excess ballots from other polling stations or photocopies with the signature of the polling station staff. This plan caused confusion among some polling staff, who in some cases rejected this measure. Iván Duque and Alejandro Ordoñez, candidates in the Great Consultation for Colombia, requested that the voting time be extended to gain time lost due to this circumstance. The Procuracy opened investigations against officials of the RNEC for lack of planning in the distribution of ballots. For its part, the Prosecutor's Office investigated the possible existence of criminal responsibilities. The Government indicated that the number of ballots was sufficient and that the problem derived from an inadequate distribution. **The EU EEM considers that, although the problem affected very few voting centres, the fact that the ballots are equipped with security measures makes them irreplaceable by photocopies.**

17 ELECTORAL APPEALS

17.1 Revocation of the registration of candidates

The CNE received 62 requests for revocation for the House and 33 for the Senate. Of those, the entity revoked a total of 51 candidates, 42 in the House and 9 in the Senate. The most frequent grounds were disqualification due to kinship, tax debts, double candidature and lack of registration requirements. Of the 42 candidacies revoked in the House, 17 belonged to lists registered to the special Afro-descendant constituency, which were rejected because they were not endorsed by any of the community councils, as established in the jurisprudence on this matter.

The law does not establish time limits for the CNE to resolve the appeals for revocation of registration. This circumstance created uncertainty regarding the final list of candidates, and delays in the time limits needed to organise the elections. Since some of the revocations were resolved after 11 February, the deadline until which changes could be made to the ballot³³. Therefore, all candidates revoked after that date could not be replaced. The votes for the revoked candidates were added to the overall calculation for their organisation.

A case of special media attention was the revocation of the registration of the candidate to the House of Representatives by Sucre Karina Espinosa, sister of a senior official of the Ministry of Interior, for

³³ If the registration is revoked due to constitutional or legal causes, a supervening or later identified ineligibility, this can be modified up to one month before the vote.

ineligibility due to family ties provided for by the Constitution³⁴. This case opened a debate on the interpretation of this constitutional precept. According to the Council of State, by her brother holding a state public office, the inability was only possible if Espinosa had aspired to a national constituency. The case is pending, as the candidate filed an appeal for nullity and a petition before an ordinary court. ***Although this issue expresses widespread concern about the traditional nepotism in Colombian politics, these grounds for disqualification could be questionable by virtue of the interpretation of the national law and in relation to Colombia's international commitments on the right to be elected.***

Although the CNE is the highest electoral authority, its decisions, including the declaration of results, are not final and can be appealed before the Fifth Section of the Council of State. This implies that certain judgements may be made after the elections, which makes them ineffective and inopportune. If there are appeals against decisions of the CNE before the Council of State, they will be presented once the results are formally declared.

17.2 Challenges to the Results of the Elections

At any time during the vote count at the regional level claims could be presented, according to the grounds typified in the Electoral Code, among which are: that the polling stations operate at an unauthorised site, that the results records are signed by less than three polling staff, that the number of citizens who cast their vote is greater than the total number of voters at the polling station, that votes or the vote count record have disappeared, or that there are errors in arithmetic or the names of candidates in the record. These claims, as well as those that could have been presented to the polling staff on Election Day, are resolved by the vote counting committees and may be appealed in a staggered manner before the departmental committees, the CNE and the Fifth Section of the Council of State.

The legislation also foresees three causes for which the vote counting committees may order recounts: that there is crossing-out or alterations on the names of the candidates or on the voting results, that there are doubts about the accuracy of the computations made by the polling staff or that there is a difference equal to or greater than 10% between the votes that a candidate receives in the Senate and in the House of Representatives. The latter grounds were the legal basis for the admission of the appeal before the Fifth Section of the Council of State by the MIRA party in its 2014 appeal.

17.3 Electoral Crimes

The reform to the Penal Code of August 2017 (Law 1864 of 2017) increased the electoral crimes from 11 to 16. Among the new crimes are vote trafficking, the election of disqualified candidates, the funding of electoral campaigns with prohibited sources, violation of campaign expenditure ceilings and omission of information about the financial donors to the campaigns. The reform raised the prison sentences of all the grounds to a maximum of 9 years and the fines up to 1,200 minimum salaries.

The Ministry of Interior launched the application Uriel (Immediate Reception Unit for Electoral Transparency) in which any citizen could lodge claims and complaints about crimes and irregularities that affect the normal development of the elections, as well as follow up on them. Through Uriel, more than 200 citizen complaints were reported during the electoral period. During that same period, the Prosecutor's Office opened 290 investigations for possible electoral crimes. Most of these investigations

34 "Those who have ties by marriage, or permanent union, or kinship in the third degree of consanguinity, first degree of affinity, or first degree relationship, with officials exercising civil or political authority".

referred to allegations of voter registration fraud, buying votes, voter intimidation, identity theft and alteration of results. The Prosecutor's Office prosecuted seven candidates to whom the grounds for disqualification were charged. For its part, the Procuracy requested the CNE to suspend the procedures for the announcement of senator-elect Aída Merlano, of the Conservative Party, to whom the Prosecutor's Office opened an investigation into the alleged buying of votes.

18 RESULTS

According to the provisional data, there was 48.85% participation in the elections to the Senate and 49% in the elections to the House of Representatives, more than four points higher than that registered in the legislative elections of 2014. The EU-EEM noted that participation was much lower in the polling stations where voters who had not been assigned a polling station according to their place of residence exercised their vote. For example, at the Corferias voting centre in Bogota, with 394 polling stations and a total of 469,361 voters (almost 10% of the city's voters), participation did not reach 15% in any of the 20 polling stations observed.

The EU EEM observed a large number of votes that were annulled because voters marked more than one of the three blank voting boxes available on the ballot.³⁵ This fundamentally affected the total number of valid votes, since blank votes are classified in this way and are counted to determine the threshold for the allocation of seats. Other causes of annulment were the existence of more than one mark on the ballot and the votes deliberately annulled by the voters. The blank vote was slightly above 5%, while the sum of invalid and unmarked votes exceeded 10% in both the Senate and the House elections. ***Although this percentage of invalid votes is similar to that of past elections, the EU EEM considers that this is a serious structural problem that the electoral authorities must address.***

In the indigenous constituency of the Senate, the blank vote accounted for 68% of the valid votes (340,798 versus 158,915 votes obtained for all the candidacies)³⁶. Although the blank vote in Colombia is considered "a form of expressing nonconformity with the candidacies of a determined electoral contest"³⁷, its high number in this case has raised questions about its possible causes, among them the design of the electoral ballot or the possible lack of knowledge of candidates among indigenous populations. In the days after the elections, there was some controversy over how to interpret the constitutional precept that obliges the repetition of elections when the number of blank votes exceeds the number of votes for candidacies. It will be up to the CNE to investigate the matter and determine if the elections in this constituency should be repeated during the official counting process.

In the absence of possible appeals and the subsequent official announcement of results, the count of votes carried out on the election night shows that Democratic Centre obtains the largest representation in the Senate, with 19 seats; followed by Radical Change, with 16; the Conservative Party, with 15; the Liberal Party, with 14; and Party of the U, with 14. In the House of Representatives the Liberal Party obtains 35 seats; Democratic Centre, 32; Radical Change, 30; Party of the U, 25; the Conservative Party, 21; and Green

35 The election for the Senate contains a blank vote box for the general election and another for the election of the indigenous constituency, while that of the House contains a third for the constituency of Afro-descendants.

36 Preliminary results. RNEC.

37 Sentence SU221/15. Constitutional Court of Colombia.

Alliance, 9. The other 7 parties obtained one or two seats each. FARC enters both chambers of Congress with 5 seats that were guaranteed by the Peace Agreement, despite obtaining just over 50,000 votes in the Senate and only 32,000 in the House of Representatives.

ANNEX 1 - RESULTS

1. Elections to the Senate, 11 March 2018 (data with 99.03% counted)

	Votes	%	Est. Seats	Seats 2014	Difference 2014-2018
Democratic Centre	2,519,395	16.44%	19	19	0
Radical Change	2,155,801	14.07%	16	9	7
Conservative Party	1,927,655	12.58%	15	18	-3
Liberal Party	1,902,179	12.41%	14	16	-2
Party of the U	1,853,357	12.09%	14	21	-7
Green Alliance	1,318,152	8.60%	10	5	5
Democratic Pole	736,536	4.80%	5	5	0
Decentes	523,412	3.41%	4	0	4
Mira	502,066	3.27%	3	3	0
Colombia Justa Libres	431,506	2.81%	0	0	0
Opción Ciudadana	354,108	2.31%	0	4	-4
Partido Somos	94,380	0.61%	0	0	0
M. Somos Colombia	63,474	0.41%	0	0	0
FARC	52,539	0.34%	5	0	5
Unión con Fortaleza	34,122	0.22%	0	0	0
Sí Se Puede	14,872	0.09%	0	0	0
<i>Blank vote</i>	835,541	5.45%			
<i>Invalid vote</i>	1,137,361	6.37%			
TOTAL valid	15,319,095		105	100	5
Participation	48.85%				

Indigenous constituencies

	Votes	Est. Seats
MAIS	72,596	1
AICO	34,961	1
ASI	23,750	0
Soberanía	15,694	0
A. T. Casiyouren	5,373	0
Renovación Étnica	4,384	0
MIA	2,181	0

2. Elections to the House of Representatives, 11 March 2018 (data with 99.03% counted)

	Votes	%	Est. Seats	Seats 2014	Difference 2014-2018
Liberal Party	2,471,596	16.61%	35	39	-4
Democratic Centre	2,388,405	16.05%	32	19	13
Radical Change	2,140,630	14.39%	30	16	14
Party of the U	1,840,481	12.37%	25	37	-12
Conservative Party	1,819,867	12.23%	21	27	-6
Green Alliance	884,146	5.94%	9	6	3
Mira	585,638	3.93%	1	3	-2
Democratic Pole	444,912	2.99%	2	3	-1
Opción Ciudadana	310,724	2.08%	2	6	-4
Decentes	262,282	1.76%	2	0	2
Colombia Justa Libres	114,174	0.76%	1	0	1
Coalición Alt. Santandereana	71,953	0.48%	1	0	1
MAIS	44,034	0.29%	1	0	1
FARC	32,636	0.21%	5	0	5
Others	1,461,478	4.42%	0	7	-7
Blank votes	805,516	5.41%			
Invalidvotes	1,652,101	9.23%			
TOTAL valid	15,678,472		168	163	
Participation	49 %				
Indigenous constituencies					
MAIS	99,645	25.76%	1		
Afro-descendant constituencies					
Playa Renaciente	32,439	7.60%			
La Mamuncia	23,627	5.54%	1		

3. Interparty consultations of Colombia, 11 March 2018

3A. Great Consultation for Colombia

	Votes	%
Iván Duque	4,044,509	67.76%
Martha Lucía Ramírez	1,538,882	25.78%
Alejandro Ordóñez	385,110	6.45%

3B. Interparty Consultation for Change

	Votes	%
Gustavo Petro	2,853,731	84.70%
Carlos Caicedo	515,309	15.29%



EUROPEAN UNION

**Election Experts Mission (EEM) to Colombia
Presidential Elections**

27 May (first round) and 17 June 2018 (second round)

FINAL REPORT

May/June 2018



TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	p.3
II. BACKGROUND	p.7
III. CONTEXT OF THE PRESIDENTIAL ELECTIONS	p.8
IV. LEGAL FRAMEWORK	p.8
<i>A. INTERNATIONAL AND REGIONAL INSTRUMENTS</i>	
<i>B. ELECTORAL LEGISLATION</i>	
<i>C. ELECTION SYSTEM</i>	
V. ELECTION ADMINISTRATION	p.10
<i>A. GENERAL OVERVIEW</i>	
<i>B. COMPOSITION OF THE ELECTION ADMINISTRATION</i>	
<i>i. The National Election Council (Consejo Nacional Electoral, CNE)</i>	
<i>ii. The Civil Registry (Registraduría Nacional del Estado Civil, RNEC)</i>	
<i>iii. Polling station staff and candidate representatives</i>	
<i>C. EVALUATION OF THE ORGANISATION OF THE ELECTIONS</i>	
VI. VOTER REGISTER	p.15
<i>A. RIGHT TO VOTE</i>	
<i>B. CHANGING REGISTERED RESIDENCE (INSCRIPCIÓN DE CÉDULAS)</i>	
<i>C. OUT-OF-COUNTRY VOTING</i>	
VII. CANDIDATE REGISTRATION	p.16
VIII. ELECTION CAMPAIGN	p.18
<i>A. LEGAL FRAMEWORK FOR PRESIDENTIAL ELECTION CAMPAIGNS</i>	
<i>B. CAMPAIGN ENVIRONMENT</i>	
<i>C. VOTE-BUYING</i>	
<i>D. ELECTION-RELATED VIOLENCE</i>	
IX. CAMPAIGN FUNDING	p.22
<i>A. LEGAL FRAMEWORK FOR THE FINANCING OF ELECTION CAMPAIGNS</i>	
<i>B. CAMPAIGN FUNDING AND SPENDING</i>	
X. MEDIA	p.27
<i>A. MEDIA LANDSCAPE</i>	
<i>B. FREEDOM OF EXPRESSION AND JOURNALISTS' WORKING CONDITIONS</i>	
<i>C. ACCESS TO THE MEDIA IN ELECTION PERIODS</i>	
<i>D. CANDIDATE DEBATES</i>	
XI. PARTICIPATION OF VULNERABLE GROUPS	p.30
<i>A. WOMEN'S PARTICIPATION</i>	
<i>B. PARTICIPATION OF INDIGENOUS AND AFRO-COLOMBIAN PEOPLE</i>	
<i>C. PARTICIPATION OF PEOPLE WITH DISABILITIES</i>	
<i>D. PARTICIPATION OF LGTBI PEOPLE</i>	
XII. NATIONAL AND INTERNATIONAL ELECTION OBSERVATION	p.32
XIII. ELECTION DAYS AND RESULTS ANNOUNCEMENTS (FIRST AND SECOND ROUNDS)	p.33
<i>A. OPENING AND VOTING</i>	
<i>B. COUNTING AND ANNOUNCEMENT OF PRELIMINARY RESULTS</i>	
XIV. ELECTION COMPLAINTS AND APPEALS	p.35
<i>A. ELECTION APPEALS</i>	
<i>B. ELECTORAL OFFENCES</i>	
XV. ELECTION RESULTS	p.38
<i>A. ANALYSIS OF PRESIDENTIAL ELECTION RESULTS</i>	
<i>B. ANNOUNCEMENT OF OFFICIAL RESULTS</i>	
XVI. RECOMMENDATIONS	p.40
XVII. LIST OF ABBREVIATIONS	p.44
XVIII. ANNEXES	p.45

I. EXECUTIVE SUMMARY

1. The 2018 presidential elections were the first to be held following the Peace Accord of November 2016, and they garnered the highest turn-out in recent years (54.22% in the first round, 53.92% in the second), reflecting Colombians' democratic maturity and their interest in this juncture of the country's politics. The polls were also characterised by a wide range of political options, a campaign which respected freedoms of expression and association, and generally efficient and professional organisation by the electoral institutions.
2. For the first time, candidates with strongly opposing political positions competed in the second round for the positions of President and Vice-President. Here, voters elected Iván Duque and Martha Lucía Ramírez, representing the conservative political options, over Gustavo Petro and Ángela María Robledo, who represented several left-of-centre parties and movements. It is the first time that the Colombian Vice-Presidency is held by a woman.
3. Six presidential candidates, all men, ran in the elections of 27 May. They and their respective vice-presidential candidates were the following: Gustavo Petro and Ángela María Robledo, for the *Coalición Petro Presidente*; Iván Duque and Martha Lucía Ramírez, candidates for the *Partido Centro Democrático*; Humberto de la Calle with Clara López Obregón, for the *Coalición Partido Liberal de Colombia* and the *Alianza Social Independiente* (ASI); Jorge Antonio Trujillo Sarmiento and Fredy Obando Pinillo, for the *Movimiento Todos Somos Colombia*; Sergio Fajardo and Claudia López, for *Coalición Colombia*, and Germán Vargas Lleras with Juan Carlos Pinzón, for the *Coalición #Mejor Vargas Lleras-Ante Todo Colombia*.
4. The legal framework provides an adequate basis for democratic elections in line with Colombia's regional and international commitments. Nonetheless, electoral legislation is spread across several laws, rulings by the Constitutional Court and the State Council, as well as administrative regulations and resolutions by the election administration, the *Consejo Nacional Electoral* (CNE), which can make it difficult to be sure which legislation is applicable. This dispersal clearly affects the principle of legal certainty and as such constitutes a weakness in the legal framework for elections.
5. Between 2017 and 2018, and in line with the ample regulatory powers granted to it by the Constitution and the Electoral Code, the CNE approved numerous resolutions regulating and interpreting technical and procedural aspects of the presidential elections, and this contributed to the dispersal of the legal framework. In practice, the CNE made excessive recourse to its regulatory powers, using it not only to provide necessary clarification where legislation was insufficiently detailed, but also to determine specific issues and several instances that were crucial to the election process. In this way, the CNE, which is composed along political lines, in effect became an 'electoral legislator.'
6. Colombia has well-established institutions charged with overseeing and organising elections: the CNE and the Civil Registry (*Registraduría Nacional del Estado Civil*, RNEC). The first is an administrative body with regulatory powers and oversight of the election process, while the latter is in charge of the voter register as well as organising all logistical aspects of elections. The State Council (*Consejo de Estado*), the highest administrative court in Colombia, determines appeals against CNE decisions, including election results. Other bodies with a role in the organisation, security and oversight of the elections include the Office of the Attorney General (*Procuraduría General de la Nación*, PGN), the office of the Prosecutor General (*Fiscalía General de la Nación*, FGN), the National Ombudsman (*Defensoría del Pueblo*), the Ministry of Interior, the army and the police force. These institutions also take part in decision-making as part of the Election Monitoring Committees (*Comités de Seguimiento Electoral*), which also include candidate representatives and members of civil society.
7. The CNE is composed of nine magistrates elected for a period of four years by the parties in the Congress, through a system of proportional representation established by the Constitution.¹ Although the Constitution guarantees the CNE's administrative and budgetary independence, in practice its budget is

¹ Article 264, amended by article 14 *Acto Legislativo 1 de 2003*.

managed by the RNEC and it has no offices outside of Bogotá, which makes it difficult for the CNE to fulfil its role as overseer of the elections. However, the CNE's limitations are also due to the fact that the Council's party-political composition results in its independence being questioned, particularly regarding issues which directly affect parties' campaigns, such as oversight of election campaigns and their funding, and disqualifications from office or from running for office. In addition, the CNE's composition sometimes generates functional obstacles, which are compounded by the lack of an adequate administrative and executive structure to carry out the Council's day-to-day tasks. These weaknesses affect the decision-making capacity of a body which, by its nature and composition, should be eminently collegial.

8. The RNEC is the body charged with organising the elections, including the management of the voter register. To this end, the RNEC has a large administrative structure both in Bogotá and in the 32 departments and 1,112 municipalities of the country. For the presidential elections, the RNEC established 96,724 polling stations in 11,233 voting centres, 6,419 fewer than for the legislative elections in March. In order to accommodate the increase in registered voters, the maximum number of voters per station was raised from 360 to 390. The RNEC justified this decision on the grounds that voting procedures are simpler for presidential elections than for legislative elections, and polling stations could therefore process more people with ease.
9. Just as it did in March, the RNEC concentrated large number of polling stations in massive voting centres in the most densely-populated cities. In contrast, many rural areas continued to lack polling stations within easy reach of voters' residences and those departments with the greatest number of municipalities with difficult-to-access polling stations registered notably lower turn-outs than the national average. Both the dense concentration of people in large voting centres and the distance between voting centres in rural areas tended to limit access to centres for citizens, and as such could have limited free exercise of suffrage.
10. The two elections days were efficiently and professionally organised, which enabled voting to take place without incident and in a peaceful atmosphere. The calm and democratic climate was further supported by clear preliminary results, which were announced in a timely manner by the RNEC. Nonetheless, on the first election day in particular, suspicions of fraud persisted, largely fuelled by Gustavo Petro's campaign messages.
11. During the period between the two rounds, and despite the results clearly showing that Iván Duque and Gustavo had reached the second round, doubts re-emerged about the credibility of counting and aggregation processes. Some 200 supposedly altered results forms began to circulate on social networks, heightening suspicions of a possible fraud, which RNEC explanations only partly assuaged. After analysing over 13,000 results forms, the Colombian *Misión de Observación Electoral* (MOE) concluded that the modifications were due to errors made during the vote counting, and that they were spread among all candidates, and did not affect the results.
12. The Office of the Attorney General reported "unexplained quantitative differences" of more than 170,000 votes between the results forms and aggregation forms for the legislative elections in March and suggesting measures during the aggregation stage such as external audits and better access for parties to the computer systems used by the RNEC for processing the preliminary and official results. Although the Attorney General made a request to the CNE and RNEC for an international audit of the software, this did not take place. Such an audit could have provided an independent voice that could have contributed to confidence in the process.
13. Public trust and the trust of candidates and civil society in the RNEC and the CNE were damaged by a series of incidents which were partly due to organisational and procedural failures. Such faults could put the Colombian electoral authorities in a more serious predicament in future polls, should the results be so close that only a small number of votes could determine the outcome of a seat in Congress or local council.
14. For the presidential elections, 36,227,267 people were registered to vote, of whom 51,69% were women and 48,31% were men – a slight increase (201,949 voters) since the March legislative elections. In the lead-up to the presidential elections, 1,368,851 voters changed their registered address, five times more than

those who did so prior to the 2014 electoral cycle. This increase may have been due to heightened interest in the election, presaging a high turn-out. However, residence changes can be linked to fraudulent practices, increasing the voter register in particular areas, with a view to altering election results. This practice, known in Colombia as electoral migration, is principally associated with vote-buying in legislative or municipal elections. Although legislation has been tightened, investigation of such practices remains difficult, as the CNE can only act after the registration change and when it has suspicions of fraud.

15. Media coverage and information shared with the EU EEM indicated that in general, fundamental freedoms related to election campaigning were respected, although there were some isolated incidents of political intolerance which affected presidential candidates and their supporters. Thirty-seven debates were held between the candidates for the first round, ensuring that voters were well-informed, and contributing to a free and well-informed vote.
16. The 2018 presidential campaign was characterised by a far greater number of public events than in previous campaigns, which had suffered from limitations on freedom of expression and association as a result of the chronic and institutionalised violence in Colombia. For the first time in many years, the armed conflict and guerrilla groups were not main campaign topics and candidates debated about corruption, education, healthcare and poverty reduction, among other subjects.
17. During the second round, in contrast, no debates were held between the two candidates. Petro's strategy did not include public events. Iván Duque focused his campaign on promoting his governmental programme, and avoided direct controversy with his competitor.
18. Eight public regional television channels cancelled the only debate that was planned between Iván Duque and Gustavo Petro during the second round election campaign, and which Petro had agreed to attend, while Duque had not. The television stations cited the lack of agreement between the two candidates and public media's duty to respect neutrality and impartiality. The EU EEM considers that, while a candidate is entitled to decline taking part in a debate, his or her absence should not infringe on another candidate's right to demand that a public television hold a debate, in accordance with legal provisions and as clarified by the Constitutional Court, nor indeed infringe on citizens' right to be informed about candidates' proposals.
19. The perpetual suspicions around vote-buying in Colombian election processes materialised on 21 June when the Office of the Prosecutor General denounced the existence of a nationwide network dedicated to vote-buying, involving more than 2000 people, and working in favour of different candidacies for Congress in the concluded March 2018 legislative elections. The Prosecutor General's investigations substantiated suspicions expressed to the EU EEM by civil society organisations and political parties in the departments Atlántico and Magdalena, where vote-buying practices are compounded by high rates of electoral migration, closely-related phenomena.
20. A comparison between the election processes in 2014 and 2018 reveal a significant decrease in violence, which was supported by the two ceasefires announced by the *Ejército de Liberación Nacional* (ELN) for the two election days. However, the MOE reported an increase in assaults against civil society leaders in the weeks before 27 May and added, after the second round, that it could not confirm that the 2018 elections had been more peaceful than those in 2014. The Peace Accord has not put a definitive end to all violence in Colombia, as armed groups continue to operate in the country.
21. Although an extensive legal framework provides tools to monitor and sanction activities related to campaign funding, the dispersal of regulatory texts across many instruments creates a general disorder which has been frequently exploited by political parties to avoid being sanctioned.
22. Although the law enables the CNE to carry out audits of campaign funding and spending, in practice the Council is limited by its lack of technical and budgetary resources. In addition, the CNE can find it difficult to act independently of the political parties which nominated its members. There are no deadlines for parties to correct reports on the funding and spending which they send to the CNE, thereby affecting the

transparency of their own declarations. Private financing is characterised by a lack of transparency. The EU EEM questions whether it is appropriate to have the CNE in charge of monitoring campaign financing.

23. While the mixed system of public and private campaign funding may seem the most appropriate in the Colombian context, each system, taken individually, has significant flaws. Public resources, through advances and reimbursements, aims to ensure equitable conditions for candidates, but the procedure to access the funding is complex and inefficient. Private funding constitutes a legitimate form of participation in political campaigns, so long as it takes place within a framework of oversight, transparency and accountability.
24. Both election days took place in peaceful and festive atmospheres, with high-turn-outs. Unlike in previous elections, no polling station had to be closed or moved due to violent incidents. Candidates deployed representatives to most voting centres, which contributed to the process' transparency and credibility. Voting procedures were almost entirely respected. At the end of both election days, the RNEC's system for transmitting and announcing preliminary results enabled rapid communication of the outcome, contributing to candidates swiftly accepting the results.
25. No candidate obtained an absolute majority during the first round of presidential elections on 27 May, and as such the two most voted-for candidates - Iván Duque, with 7,616,857 votes (39.36%) and Gustavo Petro, with 4,855,069 (25.09%) – went on to compete in the second round on 17 June. The official results highlighted a difference in the attribution of 130,000 votes between the preliminary results and the official, final results, and although this made no difference to the outcome, it did contribute to questioning how the election authorities managed the counting and aggregation processes.
26. Such differences also arose after the CNE announced the final results and victory of Iván Duque and Martha Lucía Ramírez as president and vice-president elect, on 21 June 2018. Thus, Iván Duque obtained 25,609 more votes than those reflected in the preliminary results, while Gustavo Petro had 6,260 more. According to the official results, Duque obtained a total of 10,398,689 (53.98%) votes and Petro, 8,040,449 (41.81%). Equally, the number of valid votes was some 31,000 greater in the official count as compared to the preliminary results. Further, a total of 38,632 votes changed attribution.
27. Colombian legislation does not provide for deadlines for either presenting or resolving election appeals, which creates legal uncertainty around the declaration of results, and opens the way for complaints to be submitted even after the CNE announces results, and as such it is impossible to close election processes definitively. In fact, at the close of this report, the CNE had still not definitely declared the results of the legislative election on 11 March 2018.
28. In electoral matters, judicial certainty is an essential principle which should prevail over the slow procedural pace of electoral complaints resolution in Colombia. The State Council², which has the primordial role of State body charged with the resolution of electoral controversies, should bow to the fundamental principle of respecting deadlines, which is of particular relevance in electoral matters, in order to guarantee not only judicial security but, further, the respect of the elected authorities' terms.
29. The EU EEM submits a series of recommendations to improve election processes in Colombia, for the consideration of the election authorities, the political parties and movements, and civil society. Some of these recommendations require significant legal reform, while others could be implemented by applying existing rules more stringently, or in a different manner. In any case, it would be useful to have a wide political and institutional consensus for the implementation of recommendations. Among these, the EU EEM highlights the following priority recommendations:

² The same State Council responded to the Special Electoral Mission's recommendations and asserted that "In order to ensure decisions are available, ideally before office is taken, it is proposed that an annulment challenge go back to having the validity it did before the introduction of *Law 1437 / 2011, that is to say, 20 days.*"

Institutional framework

- *In order to reduce the politicisation of the selection and composition of the Consejo Nacional Electoral (CNE), the selection of its members could be carried out by in a process less determined by the parties represented in Congress, in which universities or other independent institutions could present candidates, including civil society groups. In addition, given the administrative and technical nature of the position, it would be appropriate for those who aspire to CNE council membership to be qualified in related subjects, not to have carried out political party roles or been in elected office during at least the two previous legislative mandates. Further, in order to preserve the independence of CNE members from the legislative and executive branches of government, the CNE mandate periods should not coincide with legislative periods.*

Legal Framework

- *It would be advisable to revise certain elements of Colombian legislation so that i) it fully adhere to the regional and international principles and obligations Colombia has committed to; ii) it resolve the current inconsistencies between the Constitution, the Electoral Code, (which predates the Magna Carta), and the other laws and regulations which apply to the election process; iii) the Electoral Code be updated and streamlined, producing a consolidated body; iv) certain legal gaps be filled, and v) that mechanisms be introduced to ensure effective application, oversight and control.*

Election administration

1. *The EU EEM considers that the RNEC should facilitate independent and comprehensive audit of its software, the scope and methodology of which should be agreed with political parties and movements. At the same time, and in line with the State Council's ruling, whether or not the use of the software is in-house or outsourced, the RNEC should maintain ownership and unlimited access to software, so that such crucial parts of the election process as are aggregation and announcement of final results not be exclusively in private hands.*
- *It would be recommendable that polling stations use a single results form (E-14), which would avoid staff having to copy out the results several times and could thereby help to avoid transcription mistakes. This single form could afterwards be used to the ends intended in the counting and aggregation procedures, including publication on the RNEC website and availability for party representatives. In addition, in order to improve security and prevent later manipulations, it would be opportune to have the numbers on forms written in words as well and in figures, as is currently done on the E-26 aggregation forms.*

Funding

- *Although in the short term it would be useful to increase the resources available to the CNE's Fondo Nacional de Financiamiento Político, the EU EEM considers that in the long term it would be recommendable that a different State body be responsible for monitoring, oversight and sanctioning in matters of party funding. Given its role as controller of public finances, it would be appropriate for the General State Comptrollership (Contraloría General del Estado) to take on this crucial role in the election process, guaranteeing its independence and transparency, as well as benefitting from the fact that this body already has offices throughout the country.*

Announcement of results and challenges

- *Given that the incremental system for challenging results already offers sufficient guarantees, the EU EEM considers that lawmakers limit the possible causes for annulment claims before the CNE, and that specific deadlines be established so that the entire legislative and presidential election processes are complete before the duly elected take office.*
- *The EU EEM recommends that legislation clearly include the State Council in the architecture of the election process, maintaining its competence in matters of oversight of electoral decisions and events, but imposing deadlines which will allow the election process to conclude before the newly-elected take office, thus ensuring that the electorate's choice is respected.*

II. BACKGROUND

Following an invitation by the National Election Council, the *Consejo Nacional Electoral* (CNE), the European Union (EU) deployed a two-member Election Experts Mission (EU EEM) to Colombia, in order to observe the 2018 presidential elections. The EEM's mandate was to assess whether the election process met with Colombia's commitments to regional and international standards for democratic elections, and to propose recommendations which aim to strengthen future electoral processes in Colombia.

The EU EEM met with the election administration, political organisations, candidates, media representatives, as well national and international observation groups, among others. On election days, the EU EEM visited a limited number of voting centres in Bogotá. The Mission made three field trips, to the departments of Antioquia, Valle del Cauca, Bolívar, Atlántico and Magdalena.

The Mission wishes to thank the Government of Colombia, the *Consejo Nacional Electoral* (CNE), the Civil Registry (*Registraduría Nacional del Estado Civil*, RNEC), the departmental election authorities, political parties and organisations, civil society organisations, the EU Delegation in Bogota, as well as the EU Member State Missions and other embassies, all of which offered cooperation and support. The EU EEM extends particular thanks to the *Misión de Observación Electoral* (MOE) and *Transparencia por Colombia*, for their constant collaboration with the Mission. Finally, the Mission thanks the Colombian citizens, for their warm welcome.

III. CONTEXT OF THE PRESIDENTIAL ELECTIONS

The results of the 2 October 2016 referendum on the Peace Accord between the Colombian Government and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) revealed an almost evenly divided opinion.³ The 2018 legislative⁴ and presidential elections were the first to be held after the eventual signing of the peace accord and they determined its implementation, which will now be the responsibility of President-elect Iván Duque.

Juan Manuel Santos, the current president of Colombia, acknowledged in May 2018 that the implementation of the peace process was facing significant delays. His government attributed these delays principally to cases of corruption, drug trafficking and the development of dissident groups following the demobilisation of the FARC. At the same time, civil society organisations and political figures criticised the State's inability to guarantee the security of FARC former guerrillas, and that of rural leaders and social leaders who continued to be targeted by armed groups over land ownership and crop substitution.

On 10 May 2018, the Government and the National Liberation Army (*Ejército de Liberación Nacional*, ELN) renewed the dialogue suspended in January 2018, and in Havana discussed with a view to agreeing a ceasefire before the 27 May elections. On 14 May, the ELN announced a unilateral ceasefire between 25 and 29 May, in order to enable adequate conditions for Colombians to turn out and vote in areas of ELN presence. On 11 June, the ELN announced another 5-day ceasefire, to facilitate the holding of the second round of presidential elections.

While the legislative elections were notable for the FARC's participation, the presidential elections were marked, particularly in the first round, by episodes of tension during the campaign period, and in some cases by verbal and physical confrontations between supporters of different candidates, as well as by threats made against certain candidates. Conversely, in the lead-up to the second round, the tone of the candidates' discourse was notably less aggressive.

³ The NO vote, against the Peace Accord, won the referendum with 50.21% of the vote. The YES vote accrued 49.79%. With 34,899,945 registered voters, 13,066,047 (37,43%) took part in the consultation.

⁴ See final report of the EU EEM to legislative elections of 11 March 2018.

IV. LEGAL FRAMEWORK

A. INTERNATIONAL AND REGIONAL INSTRUMENTS

Colombia has ratified the most important international⁵ and regional⁶ treaties guaranteeing periodic and democratic elections, as well as non-discrimination in the exercise of political rights. In addition, Colombia recognises the competence of the Inter-American Court of Human Rights, the United Nations Human Rights Committee, and the Commission for the Elimination of all Forms of Discrimination against Women.

B. ELECTORAL LEGISLATION

Colombia should seek to organise and streamline its national election legislation into a single body of law

The Colombian legal framework for elections includes the 1991 Constitution, the 1986 Electoral Code (*Código Electoral de Colombia*, CEC), the 1475/2011 Law on Political Parties and Election Processes, the 996/2005 Law on the election of the President of the Republic, the 130/1994 Law on Political Parties and Movements, the 02/2015 Legislative Act on the reform of power distribution and institutional adjustment (*Acto Legislativo 02/2015 sobre la reforma de equilibrio de poderes y reajuste institucional*), and the 1864/2017 Law, which added five new election offences to the 11 already established in the Penal Code. Together, these constitute a framework providing an adequate basis for democratic elections in accordance with regional and international standards on the matter.

Nonetheless, certain elements of Colombian legislation could be reviewed, notably i) national legislation's complete compliance with international and regional principles and commitments, ii) incongruities between the Constitution, the CEC and the other laws which are also applicable to the election process, iii) the numerous gaps in legislation which require resolution, and iv) the introduction of mechanisms to apply, monitor and control, to ensure full respect of the law.

Election legislation is dispersed across numerous laws, rulings by the Constitutional Court and the State Council, as well as administrative regulations and resolutions of the *Consejo Nacional Electoral* (CNE), making it difficult to be certain about which provisions are applicable, particularly with regard to those in the CEC, which was promulgated prior to the 1991 Constitution. This dispersal clearly affects the principle of legal certainty and significantly weakens the legal framework for elections. In addition, numerous amendments to the Colombian Constitution,⁷ (which do not require a qualified majority to be passed), as well as the adoption of several statutory laws with Constitutional status, further contribute to the lack of clarity, harmony and stability in the electoral framework. This is particularly evident with regard to party and campaign funding, and as a result reference must be made to an administrative body (in this case, the CNE), to seek clarification.

In accordance with its ample regulatory powers, provided-for by the Constitution and the CEC, the CNE approved numerous resolutions between 2017 and 2018, regulating and interpreting technical and procedural aspects of the presidential elections, and this contributed to the dispersal of the legal framework.⁸ In practice, the CNE made excessive recourse to its regulatory powers, using it not only to

⁵ International Covenant on Civil and Political Rights (ICCPR); The International Convention on Elimination of all Forms of Racial Discrimination (CERD); Convention on the Political Rights of Women; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; United Nations Convention on Rights of Persons with Disabilities; Indigenous and Tribal Peoples Convention, (ILO c.169), United Nations Convention against Corruption.

⁶ The American Convention on Human Rights (ACHR); Inter-American Convention on the granting of political Rights to women; Inter-American Convention Against Corruption (IACAC); Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (A-68), which Colombia signed in 2014 but has not yet ratified.

⁷ Between its entry into force in 1991 and January 2017, the Constitution has been amended 46 times. Of these, just five amendments have been ruled unconstitutional by the Constitutional Court. The power to reform the Constitution has been used without sufficient restraint, catalysing further changes to Colombian law, which in turn has generated a perception of legal instability.

⁸ In its comments regarding the reform proposal made by the Special Electoral Mission (*Misión Electoral Especial*, MEE) the State Council underlined that, "Party and political movement representation in a body with regulatory powers related to electoral matters is not, per se, contrary to general interest. However, with regard to the functions of inspection, monitoring and oversight,

provide necessary clarification where legislation was insufficiently specific, but also to resolve arising issues and several instances that were crucial to the election process. By such means, the CNE, which is politically-formed⁹, in effect became an ‘electoral legislator.’

Considering the normative hierarchy and the necessary stability of the law, as well as international good practices in electoral matters, the EU EEM wishes to underline that, beyond technical rules and details, which may be included in regulations and in resolutions of the election administration, the fundamental rules regulating elections should have at least the status of law, and regulations which complement them should always respect provisions from instruments which take precedence.¹⁰ In no instance can regulatory powers be exceeded by infringing on the legal or Constitutional jurisdiction.

Unfortunately, many of the CNE’s resolutions are not available or are difficult to find. The CNE’s website is not updated and only through USAID support has a search facility been installed, to facilitate finding part of the Council’s resolutions and records.¹¹ These resolutions are only occasionally published on the Council’s Twitter account.

According to EU EEM interlocutors, an important opportunity was missed when Congress did not approve the electoral reform put forward by the Government in November 2017. Indeed, it would seem that the current historical context, in a crucial stage of the implementation of the Peace Accord, probably was a unique opportunity for this reform and specifically to approve a new legal framework for elections. In this regard, Colombia will need to endeavour to organise and streamline its national election legislation into a single body of law, possibly before the local elections due to be held in October 2019.¹²

C. ELECTION SYSTEM

The President and Vice-President of Colombia are elected for a period of four years, with an absolute majority of valid votes, which include blank votes. If no candidacy obtains 50% of the valid votes, the two candidacies with most votes compete in a run-off, which takes place three weeks after the first round.¹³ The 1991 Constitution was amended in 2004, to enable presidential re-election for one further term,¹⁴ this amendment was repealed by Legislative Act 02/2015, which re-introduced a prohibition on re-election. The same 2015 Act¹⁵ grants a seat in the Senate to the presidential candidate who comes second. The runner-up vice-presidential candidate is granted a seat in the House of Representatives.

it is essential that all political forces be represented and that those who reach the National Election Council be neutral and impartial, as their role demands, and in addition, that they be personally and professionally qualified to face the challenges inherent to their post.” Source: State Council Proposal, 11 May 2017.

⁹ As noted by the MEE, charging the Congress with selecting CNE members (rather than the State Council, as was the case prior to 2003) has resulted in increased influence of political parties, and has generated mistrust in the electoral authority’s independence, particular with regard to the CNE’s oversight of the very same parties and political movements. Regardless of whether the selection process actually impedes the CNE’s independence, it remains the MEE’s view that it affects the CNE’s credibility and highlights the great influence parties have over the Council, as well as the difficulties entailed in reaching agreement and taking decisions which affect political parties which selected CNE members. Source: Political and Electoral Reform Proposals, April 2017.

¹⁰ The Constitutional Court has clarified that regulatory powers are ordinary, derived, limited and permanent and, in particular, “they are limited, because their sphere of influence is limited by the law and the Constitution, and for that reason they cannot alter or modify the content or the spirit of the law, nor can they address or regulate laws which are not executed by the administration, nor regulate areas which are reserved for legislature.” Const. Court Ruling C-805, 1 August 2001; Const. Court Auto 049, 20 February 2008; Const Court Corte rulings C-734/03 and C-852/05.

¹¹ <http://relatoria.cne.gov.co>. The website has been live since 2017 but it is not regularly updated, and the majority of 2018 resolutions cannot be found there.

¹² Article 7, *Acto Legislativo 2/2002*.

¹³ Article 190, Constitution.

¹⁴ Article 2, *Acto Legislativo 02/2004*.

¹⁵ Article 1, *Acto Legislativo 02/2015*: The candidate who obtains the greatest number of votes after the person declared winner by the electoral authorities for the post of President and Vice-President of the Republic, Departmental Governor, District or Municipal Mayor, will have the right to take up a seat in the Senate, House of Representatives, Departmental Assembly, District or Municipal Council, respectively, for the duration of the elected body’s mandate. Seats assigned in this manner to the Senate of the Republic and the House of Representatives will be in addition to those provided-for in article 171 and 176. Remaining seats will not increase the number of members of said bodies. In case the seat in the territorial bodies is declined, it will be assigned in accordance with the general rule on seat assignment provided-for in article 263.

V. ELECTION ADMINISTRATION

A. GENERAL OVERVIEW

Two bodies administer and organise elections in Colombia: the National Election Council (*Consejo Nacional Electoral*, CNE) and the National Civil Registry (*Registraduría Nacional del Estado Civil*, RNEC). Although the CNE's members are called magistrates and have the same rights and incompatibility criteria as magistrates of the Supreme Court of Justice, the CNE is an administrative body charged with administering and overseeing the electoral process. Among its functions are that of registering candidates, parties and movements running in the election, aggregating votes at departmental and national level, as well as votes from abroad, declaring results and, within the administrative channel, to act as last recourse on appeals, challenges and complaints.

The RNEC is charged with organising all logistical aspects of elections, from updating the voter register to selecting polling station staff, transmitting and announcing preliminary results, and organising Aggregation Commissions (*comisiones escrutadoras*). The RNEC has permanent offices in the departments and municipalities, which provide logistical support to organising the elections. The RNEC is also responsible for maintaining the civil registry and producing identity cards, which makes it logical that for the past 70 years, the body has been granted electoral responsibilities.

At the lowest level of the electoral pyramid, polling station workers are organised in groups of maximum six members per polling station. In addition, to aggregate results, for these elections 2,080 Aggregation Commissions were formed at zonal, municipal and departmental levels, composed of judges and solicitors, as well as RNEC employees who act as secretaries, and CNE employees at departmental level.

Finally, the Fifth Chamber of the State Council, the highest instance of administrative justice in Colombia, determines appeals against the CNE, including those concerning election results. Other State organs such as those that function as the Office of the Attorney General (*Procuraduría General de la Nación*, PGN), and the Office of the Prosecutor General (*Fiscalía General de la Nación*, FGN), the National Ombudsman (*Defensoría del Pueblo*), the Ministry of Interior, the army and the police, among others, all have relevant roles in the organisation and oversight of the electoral process, and participated in election-related decisions. This electoral structure can be confusing, particularly given the fact that some of the large number of public bodies involved in the elections share the same responsibilities.

Election Monitoring Committees and Sub-committees (*Comités y subcomités de Seguimiento Electoral*) were created at national, departmental and municipal levels, charged with coordinating and determining security and logistics activities. They were composed of representatives from electoral and governmental bodies, political parties, presidential candidacies, as well as the Colombian election observation organisation, *Misión de Observación Electoral* (MOE).¹⁶

At national level, the committee is presided by the Minister of Interior, while at other levels, they are presided by departmental and municipal authorities. On exceptional occasions, the National Committee is presided by the President of the Republic. The EU EEM was invited to all four of the National Committee meetings which took place during the election period, two prior to each election day. These committee meetings were extremely useful, not only for sharing information and proposing initiatives to improve the election process, but also to assuage concerns about the credibility of the process in a highly polarised political environment.

B. COMPOSITION OF THE ELECTION ADMINISTRATION

i. THE NATIONAL ELECTION COUNCIL (CONSEJO NACIONAL ELECTORAL, CNE)

The CNE is composed of nine magistrates elected for a period of four years by the parties in the Congress, through a system of proportional representation established by the Constitution.¹⁷ The current CNE magistrates took office in 2014 and their mandates will end on 31 August 2018. The new Congress will have

¹⁶ Decree 2821 (2013)

¹⁷ Article 264, amended by article 14 *Acto Legislativo 1 de 2003*.

to elect the new CNE very shortly after it is formed. The fact that the CNE's and Congress' terms will be almost the same could constrain the Council's independence. Although the Constitution guarantees the CNE's administrative and budgetary independence, in practice its budget is managed by the RNEC and it has no offices outside of Bogotá, which makes it difficult for the CNE to fulfil its role as overseer of the elections. These difficulties are particularly evident during the local and Congressional elections, when it would be appropriate for there to be a CNE representative in each department and municipality, to carry out CNE duties on site. To a lesser degree, this also applies during presidential elections.

However, the CNE's limitations, as identified by the EU EEM which observed the legislative elections in March 2018, are also due to the fact that the Council's composition, absolutely party-political, results in its independence being questioned, particularly regarding issues which directly affect parties' campaigns, such as oversight of election campaigns and their funding, and striking off candidacies and disqualifications from office (*see Section IX Campaign Funding*). In addition, the CNE's composition sometimes generates functional obstacles: for example, for almost the entire electoral period of 2018, the CNE only had interim presidents because magistrates were unable to agree on who should hold the post.¹⁸ The CNE's efficiency was negatively affected by this circumstance, compounded by the lack of a real administrative structure and executive branch to carry out the Council's tasks. These weaknesses affect the decision-making capacity of a body which, by its nature and composition, should be eminently collegial.

ii. *THE NATIONAL CIVIL REGISTRY (REGISTRADURÍA NACIONAL DEL ESTADO CIVIL, RNEC)*

The RNEC is led by the National Registrar, who is selected on merit by the presidents of the Constitutional Court, the Supreme Court of Justice, and State Council, for a period of four years.¹⁹ The RNEC is responsible for determining the location of polling stations in accordance with provisions of the Electoral Code, as well as the selection of polling staff and accreditation of party and candidate representatives in polling stations and aggregation commissions.

The RNEC established 96,724 polling stations in 11,233 voting centres. This constituted a reduction of 6,419 polling stations as compared to March, when there were 103,143. In order to accommodate the increase in registered voters, the maximum number of voters per station was raised from 360 to 390. The RNEC justified this decision on the grounds that voting procedures are simpler for presidential elections than for legislative elections, and polling stations could therefore process more people with ease.

Just as it did in March, the RNEC concentrated large number of polling stations in massive voting centres in the most densely-populated cities. As such, 53% of registered Colombians were allocated polling stations in 11% of all voting centres.²⁰ In contrast, many rural areas continued to lack polling stations within proximity of voters' residences.²¹ Those departments with the greatest number of municipalities with difficult-to-access polling stations registered notably lower turn-outs than the national average.²² Both the dense concentration of people in large voting centres and the distance between voting centres in rural areas tended to limit access to centres for citizens, and as such could have limited free exercise of suffrage. While the RNEC has the power to reduce the size of the biggest voting centres, increasing the number of voting centres in rural areas would depend on changing Colombia's administrative divisions. This is because the

¹⁸ Article 11 of the CNE's Internal Regulations (Resolution 65, 1996) provides that its president be elected for one year, by at least two thirds of its members. The last CNE president's mandate expired in August 2017, and since then, the election of a new president has been on the order of business in all of the Council's plenary sessions, but magistrates have not been able to reach agreement. As a temporary solution, the magistrates approved a resolution according to which the Interim Presidency would be held by a rotation of members, in alphabetical order. However, after the last rotation in November 2017, when the Interim Presidency was held by Magistrate Idayris Yolima Carrillo, no further rotations have taken place. On 9 July 2018, the CNE plenary elected Carrillo as President of the CNE. Source: CNE press release 205.

¹⁹ Article 266 of the Constitution, amended by article 15 of *Acto Legislativo 1 de 2003*.

²⁰ A total of 19,315,861 people voted in 1,552 centres which had more than 20 polling stations. Of these, 88 centres had more than 50 polling stations and 6 had more than 90, as was the case for one voting centre in Bogotá (the *puesto censo*, with 394 polling stations), and for the centre in the Colombian consulate in Caracas (97 polling stations).

²¹ Of Colombia's 1,112 municipalities, 360 have difficult-to-access polling stations. Source: MOE.

²² In those departments which the MOE asserted more than 70% of polling stations are difficult to access, turn-out was less than half the national average in both rounds.

Electoral Code establishes a maximum of one voting centre per subdivision of a municipality, regardless of its size or population.²³

iii. POLLING STATION STAFF AND CANDIDATE REPRESENTATIVES

The RNEC selected 641,739 people, of whom 370,633 (57,75%) women and 27,106 (42,25%) men to staff polling stations, based on lists provided by public bodies, private businesses and political parties, and in accordance with criteria which stipulate that no political party or movement may hold all the posts at any given polling station.²⁴ According to the RNEC, 30,561 public and private bodies proposed 2,158,981 of whom almost 1.5 million were randomly selected. Of these, some 4000 were proposed by political parties. Polling station duty is considered a civic duty and cannot be declined.²⁵ However, it is not obligatory to attend training sessions. According to the RNEC, more than 20% of poll workers were not trained,²⁶ which contributed to poor understanding of voting and counting procedures on both election days. This phenomenon was particularly highlighted by the MOE and civil society representatives in the departments of Atlántico, Bolívar and Magdalena. The Office of the Attorney General (*Procuraduría General de la Nación*, PGN) identified weaknesses in staff training during its monitoring of the March elections and suggested that improvements focus on counting procedures and the completion of results forms.²⁷

Although selection of polling workers is supposed to be random in order to ensure independence and freedom from undue influence, the EU EEM received reports that in Bogotá and Medellín some polling workers knew each other before working together, which could indicate that the selection was not sufficiently random. Concerns about staff selection were fuelled when, 10 days before the first round, Senator Armando Benedetti (*Partido de la U*) denounced that at least 4000 poll workers selected for the legislative elections did not appear as employees of the companies that had proposed them in State records such as Social Security data.²⁸ Doubts about nominations and insufficient oversight over the selection process were heightened between the two presidential rounds, when social networks published numerous results forms with corrections, which suggested that there had been intentional alterations of the results of the first round. (*See Evaluation of Election Organisation.*)

The Electoral Code grants parties, political movements and presidential candidacies the right to one representative (*testigo electoral*) in each polling station and aggregation committee.²⁹ These were nominated by the political organisations and accredited by the RNEC. For both election rounds, the RNEC extended its deadline to submit representatives' names until 22 hours before election day, and permitted up to three reserve representatives per voting centre for each candidacy.³⁰ In any case, given the proximity of polling stations in large voting centres, a single party representative could monitor several stations at a time. Although, contrary to best practice, Colombian legislation does not provide for party representatives to receive a copy of results forms, they were allowed to take photograph the forms. That said,

²³ Article 99 of the Electoral Code states that “ polling stations must be established in the municipal capitals and municipal subdivisions [*corregimientos*] and judicial subdivisions [*inspecciones de policía*] which have a certain number of people living away from the capital, or which is more than five kilometres from said capital, or which has more than 400 registered voters. In order to establish polling stations in a *corregimiento* or *inspección de policía*, it is necessary to do so no less than six months before election day.”

²⁴ Procedures for application and selecting polling station staff are detailed in article 5 of Law 163 of 1994.

²⁵ Article 105, Electoral Code.

²⁶ This percentage was higher in some Pacific and Caribbean departments such as Bolívar (44,54%), Atlántico (39,25%), Chocó (37,17%), La Guajira (35,05%), Cesar (28,69%) and Magdalena (28,14%).

²⁷ In a letter of 30 April addressed to the National Registrar, the Office of the Attorney General suggested to the RNEC that it improve the reliability of results transmission and aggregation, in order to reduce differences between the preliminary and the final, official results. Document CNCAE-0392.

²⁸ According to the complaint, some of these companies were created for the sole purpose of proposing citizens as polling staff who could influence the election results. The RNEC rejected these accusations, alleging that many of the people concerned were students, which explained why they did not appear in any database. The RNEC explanations did not satisfy some parties, candidates and civil society organisations.

²⁹ Article 121, Electoral Code. RNEC Circular 039, 23 February 2018.

³⁰ CNE Resolution 1358 / 2018. These measures were aimed at facilitating the presence of party representatives during voting and counting. On election day for the first round, the RNEC accredited 192,142 representatives for six of the presidential candidates: Gustavo Petro and Iván Duque had 58.549 and 58.319, respectively. Germán Vargas Lleras nominated 45.412 representatives, while Sergio Fajardo and Humberto de la Calle had 16.248 and 14.811 respectively. For the second round, Iván Duque y Gustavo Petro had 55.116 and 61.858 representatives respectively in polling stations and aggregation commissions.

implementation of this facility in the first round was the subject of confusion in some cases, since the law prohibits the use of cameras and mobile telephones in polling stations. This apparent contradiction was corrected for the second round, by way of a RNEC instruction included in all polling station materials packs.

C. EVALUATION OF THE ORGANISATION OF THE ELECTIONS

In terms of management and logistics, the presidential elections were organised in an efficient and professional manner, which ensured that both election days took place without incident and in a peaceful environment. The calm atmosphere was maintained thanks to the clear and timely manner in which the RNEC announced preliminary results for both rounds (*see Section XIII Election Days*). However, just as for the legislative elections in March 2018, some candidates' confidence in the RNEC and CNE (particularly Gustavo Petro's), and that of civil society organisations, was affected by a series of organisational and procedural faults. Although these had no impact on the final results of the elections, such faults could put the Colombian electoral authorities in a more serious predicament in future polls, should the results be so close that only a small number of votes could determine the outcome of a seat in Congress or local council. The credibility of the CNE and RNEC was particularly harmed by a ruling by the State Council on 8 February 2018, concerning a call for annulment presented by the MIRA party following the 2014 legislative elections: the ruling determined that three Senate seats which has been attributed to other parties should in fact be given to MIRA.³¹ In addition, organisational flaws during the March legislative elections resulted in there being insufficient ballots for one of the two elections in some locations.³² Furthermore, parties and civil society organisations complained that people who voted in the primary elections were recorded in a special voter list for each election, which constituted an indication of their political inclinations. The RNEC destroyed these lists some two months after the primary elections, following several requests to do so, notably by the Office of the Prosecutor General and the MOE.³³

Another controversy was caused when the final version of Gustavo Petro's logo was not included in the ballot for the first round of elections, despite the fact that the change had been authorised by the CNE³⁴ and that comparable changes for other candidates had been implemented by the RNEC.³⁵ Mistrust was heightened by a letter from the Office of the Attorney General to the National Registrar³⁶, asserting "unexplained quantitative differences" of more than 170,000 votes between the results forms and aggregation forms for the legislative elections in March and suggesting measures during the aggregation stage such as external audits and better access for parties to the computer systems used by the RNEC for processing the preliminary and official results. Finally, no international audit was made of the software used, despite a request to that effect by the Attorney General to the CNE and RNEC in early April. Such an audit could have provided an independent voice that could have contributed to confidence in the process.³⁷

Some civil society organisations and presidential candidates – particularly Gustavo Petro – expressed their concern that such irregularities could take place during the first presidential round, and questioned the computerised processes for the transmission and announcement of preliminary results, which the RNEC had contracted out to private companies, and they demanded increased oversight and auditing of the

³¹ The State Council ruling revealed that during the 2014 elections, there were unexplained differences between results forms and consolidation forms, irregularities in the voting and transmission of results system, and negligent custody of election materials, which the State Council stated was the CNE's and RNEC's fault. The ruling stated that these anomalies "violated the constitutionally-guaranteed right to elect and be elected" and "negatively affected the principles of transparency, equality and freedom of the electoral system, subverting the purity of the vote and the effectiveness of suffrage." The ruling can be consulted at: <https://goo.gl/6MUvqu>

³² On this occasion, and citing financial difficulties, the RNEC printed half as many ballots as there were registered voters for one of the two elections, resulting in a lack of ballots in some places, particularly for the *Gran Consulta por Colombia*. (*See section 16 of the EU EEM Final report on the legislative elections.*)

³³ Letters dated 20 and 22 March, respectively.

³⁴ CNE Resolution 0904, 10 April 2018. This resolution was communicated to the RNEC.

³⁵ The CNE also authorised changes to German Vargas Lleras' logo, as well as a new photo for his vice-presidential candidate Juan Carlos Pinzón, and these changes were reflected in the final version of the ballot.

³⁶ Document CNCAE-0392.

³⁷ Document DP00097. In his 3 April letter, the Attorney General suggested to the CNE and RNEC that they invite the International Foundation for Electoral Systems (IFES) to carry out the audit. However, the CNE did not extend the invitation until 9 May, little more than 2 weeks prior to the elections, which was not sufficient to carry out an adequate audit. On 16 May, IFES declined the invitation.

aggregation software. One week before the 27 May elections, Petro referred to these concerns as he warned of a possible fraud.

In an attempt to offer guarantees of a clean election process, the President of the Republic convened an extraordinary meeting of the National Election Monitoring Committee on 23 May, which served to reassure both candidates and citizens, largely by explaining the measures adopted by the RNEC and the CNE to boost confidence in the process³⁸, including the extension of the deadline for accreditation of party representatives, and better access for candidates to the results forms which would be used in the official consolidation.

In the period between the two rounds, doubts re-emerged about the credibility of counting and aggregation processes, as well as regarding the training for polling staff. Had the first round results been closer, which would have catalysed a greater number of complaints, this could have jeopardised the organisation of the elections, given the short time (three weeks) between the first and second rounds.³⁹

In the week following the first round, some 200 results forms from the RNEC website, which had allegedly been altered, were circulated on social networks. The forms showed amendments and cross-outs which apparently resulted in an increase in votes for Iván Duque. The RNEC reacted quickly to the suspicions aroused, explaining that the forms with amendments were those submitted to the RNEC for publication on its website (known as *E-14 delegados*), while the official forms (*E-14 claveros*) showed no signs of alterations. The apparent alterations were due to the fact that, following RNEC instructions, polling staff had marked empty fields on the results forms with a hyphen (-), making it possible to modify them and turn them into figures. In a further attempt to allay concerns, the Minister of Interior convened an extraordinary meeting of the Electoral Monitoring Committee, during which the RNEC explained that the modifications seen on the forms were due to mistakes by polling staff which had affected all candidates.

The MOE carried out an analysis which concluded that the modifications affected 3.2% of the official results forms, and 2.8% of the forms used for data entry (*delegados forms*) and that the alterations affected all candidates equally. The MOE nonetheless pointed out that such rates of alterations would have had an impact on the results of Congressional or local elections.

The problem was primarily due to the fact that polling staff had to complete a form in three parts. Although candidates and civil society organisations had asked the RNEC to simplify the results form, in order to minimise mistakes and avoid tarnishing the credibility of the election process, the RNEC maintained the three components of the form for the second round and expressed no intention of revising them prior to future elections. However, in order to avoid the errors committed in the first round, the RNEC issued new instructions on the correct completion of the forms, in which it was also emphasised that party representatives could photograph all parts of the form, once completed by polling staff.

VI. VOTER REGISTER

A. THE RIGHT TO VOTE

Citizenship and voting rights begin from the age of eighteen. Active members of the armed and police forces cannot vote, and nor can those who are subjects of a judicial sentence suspending their right to vote. The Constitution establishes that participation in public matters is a civic duty, but voting is not obligatory in Colombia.⁴⁰ For the presidential elections, 36,227,267 people were registered to vote, of whom 18,725,205 (51,69%) were women and 17,502,062 (48,31%) were men. There was a slight increase (0.55%) in registered voters since the legislative elections in March 2018 (by 201,949 voters). Inclusion in the voter register is automatic once an identity card is issued, and assignation to a voting centre close to the declared

³⁸ On 22 May, the CNE approved two resolutions. The first (Resolution 1368/2018) allowed party representatives to observe counting and consolidation processes, have access to data entry, verify software sources and receive voter register files. The second (Resolution 1364/2018) called on the RNEC and the aggregation commissions to give electronic copies of the official results and consolidation forms (E-14 and E-24), which would enable them to detect any possible differences between them. The resolutions were however approved too late to have adequate impact.

³⁹ Article 190, Constitution.

⁴⁰ Articles 40, 98, 219 and 258 of the Constitution.

residence takes place at the same time. The only exception to this concerns those who received their identity cards between 1998 and 2003, who were assigned voting centres known as *puestos-censo*, that is, Register Centres. The national identity card must be produced in order to vote.

Law 1475 of 2011 established that the voter register should be closed two months before an election.⁴¹ Since citizens cannot obtain an identity card until they turn 18, those who reach this age in the two months prior to an election are not included in the voter register and cannot vote, which is not in line with international best practice.

B. CHANGING REGISTERED RESIDENCE (*INSCRIPCIÓN DE CÉDULAS*)

Colombian legislation permits changes of registered residence, a process known as *inscripción de cédula*, during the year prior to elections, up to the two months before election day.⁴² The citizen must declare in good faith that they live in the place where they wish to vote, and does not have to provide any supporting evidence. The residence change period for the presidential elections (27 May 2017 to 27 March 2018) overlapped with the corresponding period for the legislative elections (11 March 2017 to 11 January 2018). During the last two months or so of the presidential election residence change period, when the corresponding period for legislative elections had ended, (12 January to 27 March 2018)⁴³ 1,368,851 voters changed their registered address, five times more than those who did so prior to the 2014 electoral cycle.⁴⁴

Some EU EEM interlocutors considered that this increase was due to heightened interest in the election, and presaged a high turn-out. However, residence changes can be linked to fraudulent practices, increasing the voter register in particular areas, with a view to altering election results. This practice, known in Colombia as electoral migration, is principally associated with vote-buying in legislative or municipal elections, where a small number of votes can affect the results of a small constituency. Some EU EEM interlocutors indeed suspected that many of the residence changes were requested with an eye on the municipal elections planned for October 2019, since such changes have no effect on presidential elections, which have a single, national constituency.

Since August 2017,⁴⁵ fraudulent residence changes constitute an offence punishable by four to nine months imprisonment for those who, by whatever means, are responsible for “people eligible to vote who register their citizenship documents to a village, municipality or district which is not where they were born or currently reside, for the purposes of gaining electoral advantage.” The offence also extends to those who fraudulently change their identity card for the purposes of benefit for themselves or for third parties. From this date onwards, according to the Office of the Prosecutor General (*Fiscalía General de la Nación*, FGN), at least one ex candidate to a local council has been sentenced for such practices.⁴⁶

Although legislation has become tougher, investigation of such practices remains difficult, as the CNE can only act after the registration change and when it has suspicions of fraud, by consulting national Social Security databases or those of social programmes beneficiaries. Furthermore, Colombia does not require municipal registration, which would have provided a reliable database of resident citizens against which electoral residency changes could be checked.

⁴¹ Article 48, Law 1475 / 2011.

⁴² Article 49, Law 1475 / 2011. Article 4 of Law 163/ 1994 also notes that “residence shall be considered the address at which the vote is registered on the voter register. Upon registering /amending his address, the vote swears under oath that he resides in the municipality in question.”

⁴³ The RNEC reported that 1,925,024 residence changes were registered during the period to do so prior to the legislative elections. See *Final Report of the EU EEM for the legislative elections*.

⁴⁴ More than 280,000 voters changed their registered address during that period. Source: RNEC.

⁴⁵ Decree 1864 / 2017 added five new electoral offences to the existing 11 ones, including fraudulent residency changes. As well as prison sentences, the offence is sanctioned with fines of up to 200 minimum monthly salaries (approx. 46.000 euros).

⁴⁶ In March 2018, the former candidate to the Council of Yumbo (Valle del Cauca), Adolfo León Serna Giraldo, was sentenced to four years in prison, for his involvement in the fraudulent change of residencies prior to the 2015 elections.

C. OUT-OF-COUNTRY VOTING

Colombians who wish to vote from abroad can register at embassies and consulates up to two months before the elections.⁴⁷ For the presidential elections, the register of voters abroad had 819,398 entries, which constitutes a 12.09% increase as compared to the legislative elections in March.⁴⁸ For these elections, the RNEC prepared 1,500 polling stations in 69 countries.

VII. CANDIDATE REGISTRATION

Six presidential candidates, all men, ran in the elections of 27 May. They and their respective vice-presidential candidates were the following: Gustavo Petro and Ángela María Robledo, for the *Coalición Petro Presidente*; Iván Duque and Martha Lucía Ramírez, candidates for the *Partido Centro Democrático*; Humberto de la Calle with Clara López Obregón, for the *Coalición Partido Liberal de Colombia* and the *Alianza Social Independiente* (ASI); Jorge Antonio Trujillo Sarmiento and Fredy Obando Pinillo, for the *Movimiento Todos Somos Colombia*; Sergio Fajardo and Claudia López, for *Coalición Colombia*, and Germán Vargas Lleras with Juan Carlos Pinzón, for the *Coalición #Mejor Vargas Lleras-Ante Todo Colombia*.

Two registered candidates withdrew from the race: Viviane Morales, for the *Somos* party, and Piedad Córdoba, for *Poder Ciudadano*. After her withdrawal, Viviane Morales backed Iván Duque's candidacy, while her vice-presidential candidate, Jorge Leyva, supported Germán Vargas Lleras. Viviane Morales and Piedad Córdoba had been the only women presidential candidates. Four women ran as vice-presidential candidates. It is the first time in Colombian history that the Vice-Presidency will be held by a woman, Martha Lucía Ramírez, leader of the *Partido Conservador*.

For the first time, coalitions were allowed for the legislative and presidential elections. Registration of coalitions caused controversy at the CNE because the constitutional provisions defining permissible coalitions were not detailed by law. In the case of the presidential elections, coalitions can cause confusion for voters, as some candidates had in the past been belonged to alliances other than those they ran with for these elections. For example, Gustavo Petro's vice-presidential candidate, Ángela María Robledo, had been a member of the House of Representatives under the banner of the *Alianza Verde*, which went on to be part of the Sergio Fajardo's *Coalición Colombia*. In the same vein, Clara López Obregón, De la Calle's vice-presidential candidate, also belonged to *Coalición Colombia*.

Political parties and movements can register candidates for the presidential elections either individually or within a coalition. In addition, social movements and groups can register candidates with the RNEC, although they have to present support signatures equivalent in number to 3% of the valid votes in the previous presidential elections.⁴⁹ Just 11 of the 49 committees for aspiring presidential candidates presented sufficient signatures to support their candidates and they reached more than 16 million signatures. The RNEC rejected over 8 million signatures (almost 50%) due to missing or inconsistent information.⁵⁰ In the end, just 8 of the 11 aspiring candidates obtained the necessary number signatures.⁵¹

In line with the law and RNEC regulation, registration of presidential candidates begins four months before election day and lasts 30 working days. Candidacies can be modified within the five following working days. In the case of the 2018 presidential elections, the deadline for those candidates who had not taken part in

⁴⁷ Article 50, Law 1745 / 2011.

⁴⁸ The register for voters abroad was made up of 720,259 voters, for the legislative elections on 11 March 2018.

⁴⁹ There were 12,871,600 valid votes in the 2014 presidential elections, and 3% of these represent the 386,148 signatures required.

⁵⁰ Just 2,752,287 (48%) of the 5,222,088 signatures presented by candidate Germán Vargas Lleras were validated by the RNEC. Candidate Gustavo Petro presented 852,345 signatures, 64,6% of which were accepted by the RNEC. Of the 16,154,288 signatures presented by the 11 would-be candidates, 7,961,453 were invalidated (49,3%).

⁵¹ Article 7 of Law 996/2005: Registration for candidates for the Presidency of the Republic. Registered parties and political movements may register a candidate for the Presidency of the Republic, either individually or in alliances. The registration will have to be underwritten by the party or movement's legal representative. Social movements or groups can register a presidential candidate. In order to do so, they must present to the *Registraduría Nacional del Estado Civil* a number of signatures not inferior to 3% of the valid votes cast in the previous presidential elections. These signatures must be presented to the RNEC at least 30 days before the candidate registration period begins. The RNEC must certify the number of signatures required eight days before said registration period begins.

the primary elections was set on 9 March 2018. For those who had competed in primary elections on 11 March, the deadline was set five days later (16 March).⁵²

Once registration was concluded, the CNE announced eight presidential candidate teams. Two candidates, Piedad Córdoba and Viviane Morales, withdrew on 9 April and 2 May respectively. Although the RNEC was able to remove Córdoba from the ballot, Morales withdrew after ballots had been printed. The RNEC confirmed to the EU EEM that votes cast for Morales were only recorded for statistical purposes: even if she had reached the threshold of 4%, she would not have been entitled to any electoral reimbursements.⁵³

The status and role of blank votes in Colombia

Colombian legislation explicitly offers voters the option of casting a blank vote, so ballots include an option for a blank vote, and such votes are considered valid. As such, blank votes can reduce the chances of a presidential candidate winning in the first round by absolute majority. For the same reason, blank votes may also make it more difficult for some candidates to reach the 4% threshold required to have campaign costs reimbursed.⁵⁴ In addition, parties or political movements may promote blank votes in any election, for which they need to register in the same way as parties who are putting forward candidates. In this case, they will appear on the ballot as promoters of the blank vote.⁵⁵ For the first time in Colombian presidential elections, a political party, the *Partido de Reivindicación Étnica* (PRE), actively promoted the blank vote and registered for that purpose. As such, the PRE appeared on the ballot, with their logo and a checkbox for a blank vote.⁵⁶ Votes for PRE were counted separately from the ‘standard’ blank vote option, in order to ascertain whether the party had reached the 4% threshold. Should blank votes (whether ‘standard’ or ‘promoted’) ever gain an absolute majority in a presidential, legislative or local election, then elections must be re-run, with new candidates.⁵⁷ Unmarked ballots are considered invalid.

VIII. ELECTION CAMPAIGN

A. LEGAL FRAMEWORK FOR PRESIDENTIAL ELECTIONS

In line with Law 996/2005,⁵⁸ the campaign for the presidential elections began on 27 January 2018, four months before polling day, and lasted until the day before voting. The campaign for the second round was relaunched the day after first round polling, and lasted until 16 June. In fact, both Iván Duque and Gustavo Petro made their first speeches for the second round campaign on the night of the elections on 27 May.

Although in Colombia the campaign continues until the day before polling, during the last week of campaigning there may be no events in public spaces, in accordance with article 2 of Law 996/2005. Thus, between 21 and 28 May, for the first round, and between 11 and 18 May for the second round, the only permitted events are behind closed doors. Although these periods of times are clearly defined in the Ministry of Interior’s Public Order Decree,⁵⁹ article 22 of the cited law limits broadcasting and equal access to the broadcast media for candidates activities for up to eight days before polling. In principle, and as confirmed by several members of the CNE, a candidate is allowed to campaign in public areas up until the

⁵² Two primary elections were held on the same day as the legislative elections on 11 March 2018. Both included candidates from different parties or movements. The *Gran Consulta por Colombia* included Senator Iván Duque from the *Centro Democrático*, the former minister Marta Lucía Ramírez and the former attorney general Alejandro Ordóñez. This primary was won by Iván Duque, with 4,044,509 votes (67,76%). For its part, the *Consulta Inclusión Social por la Paz* was contested by two leftwing candidates: the former mayor of Bogotá, Gustavo Petro, who won with 2,853,731 votes (84,7%), and the former mayor of Santa Marta, Carlos Caicedo.

⁵³ Viviane Morales obtained 36,138 votes (0,19%) in the first round of the presidential elections.

⁵⁴ In the first round of the 2014 presidential elections, 770,543 (5,98%) of all valid votes were blank votes and in the second round, they accounted for 618,759 votes (4,02%). In 2018, blank votes accounted for 338.581 (1,75%) of all valid votes, and in the second round, 807.924 (4,2%) of all valid votes.

⁵⁵ In Colombia, blank votes are considered a political expression of dissatisfaction with the options available and are considered, equally, to be a form of protection for voters’ freedom to choose. As such, the Constitution grants blank votes a decisive role in election processes. (Article 258 of the Constitution and Constitutional Court ruling C-490 / 2011.)

⁵⁶ Active promotion of blank votes was introduced in Law 1475/2011. The specific provisions are also found in CNE Resolution 0920/2011.

⁵⁷ Article 9, *Acto Legislativo* 01/2009 which amends article 258 of the Constitution.

⁵⁸ Article 2 of Law 996/2005, regulating the election of the President of the Republic, in line with sub-section f) of article 152 of the Constitution, and in line with *Acto Legislativo* 02/2004 and other provisions.

⁵⁹ Decree n°847/2018, 18 May 2018.

day before polling. In practice, all candidates respected the Interior Ministry's decree in both the first and second rounds.

The presidential and legislative campaigns overlapped for over six weeks, which facilitated coordination and holding joint events for candidates from the two races. Before holding rallies, demonstrations or other campaign events in public spaces, the authorities must be notified, in line with article 53 of the National Police Code (Law 1801/2016). The same code and some local regulations outline further regulatory requirements which must be complied with.

B. CAMPAIGN ENVIRONMENT

The 2018 presidential campaign was noticeably different from previous campaigns in that a greater number of events were held, whereas in the past the rights to expression and association were limited by chronic violence. Some candidates, such as Gustavo Petro, and to a lesser extent, Sergio Fajardo and Humberto de la Calle, particularly emphasised direct contact with their supporters through public events with high impact and visibility.

The campaign in Bogotá and big cities such as Medellín and Cali was discreet, because most events and activities took place on television and on social networks. During the campaign, the presidential candidates took part in several thematic debates, which were broadcast live on television and/or on social networks. (See Section X Media)

For the first time in many years the armed conflict and guerrilla groups were not main campaign topics and candidates debated about corruption, education, healthcare, poverty reduction and the use of alternative energy sources. The current crisis in Venezuela, the constant arrival of refugees and the re-election of President Nicolás Maduro became campaign issues.

The massive use of social networks for dissemination of messages of political intolerance tarnished the campaign and exacerbated polarisation

Media coverage and the information shared with the EU EEM indicated that in general the fundamental freedoms related to campaigning were respected, although there were some isolated incidents of political intolerance which affected presidential candidates and their parties. (See Final Report by EU EEM for Congress elections). Nonetheless, Mission interlocutors defined the campaign as the harshest and most polarised in recent history in Colombia, wherein the use of social networks generated episodes of political intolerance, false news and personal attacks against candidates. A survey carried out by the Ministry of Education between January and March 2018 found that about 20% of campaign-related messages in social networks included language which indicated political intolerance or polarisation.

The election campaign for the first round was characterised by a growing polarisation of the candidates. Gustavo Petro, for the *Coalición Petro Presidente*, raised his tone and the content of his discourse during the last two weeks of the campaign. While at the start of his campaign, his message denigrated other candidates, particularly Iván Duque and German Vargas Lleras, later he focused his attacks on the RNEC and President Juan Manuel Santos.⁶⁰

In particular, Petro alerted his supporters to the risk of fraud against his candidacy on 27 May, making reference to the RNEC and CNE's late invitation to IFES to audit the software prepared for counting and aggregation, and the general lack of trust in the system for processing election results. Petro further accused the president, Juan Manuel Santos, of blocking a study of the software algorithm by a so-called 'European Union Technical Electoral Commission.'⁶¹

⁶⁰ <https://twitter.com/petrogustavo/status/997885119728898048>.

⁶¹This accusation was made during Gustavo Petros's closing campaign event in Bogotá on 17 May. <https://twitter.com/petrogustavo/status/997904216193630208> On 19 May, the Presidency of the Republic released a message explaining that the President of the Republic was not responsible for inviting or authorising national or international observation missions, since this was the competence of the RNEC and the CNE. The message also stated that the EU EEM had been in the country since 4 May, after the European Union accepted the invitation extended by the Colombian electoral authorities. <http://es.presidencia.gov.co/noticia/180519-Comunicado-de-Prensa>. On 20 May, the RNEC issued a press release confirming that the EU EEM had been present since 4 May and had attended three practice runs for the results software, as arranged by the RNEC on 8, 12 and 19 May 2018. www.registraduria.gov.co/COMUNICADO-A-LA-OPINION-PUBLICA,25880.html. On the same day, Gustavo Petro declared in a press conference that the European Union had been poised to send a technical mission to audit the

Iván Duque avoided responding to Petro's accusations and focused on his governmental programme. Nonetheless, he asserted that "Petro's accusations are very dangerous and risk destabilising the country, which could also lead to violent events if he decides not to accept the results and calls on his supporters to come into the streets."

Sergio Fajardo (*Coalición Colombia*) successfully promoted a campaign which focused on education and a prosperous future for Colombia, emphasising his youth. For his part, Humberto de La Calle used his recent past as a statesman and government negotiator for the Peace Accord, to concentrate his message on the promotion and implementation of said agreement. Finally, German Vargas Lleras promoted the 27 pillars of his governmental programme, with a view to renovating the main axes of Colombian society, including reforms of the justice and system systems, as well as education, healthcare and the mining sector.

The second round election campaign: strategic alliances but little enthusiasm and no candidate debate

While the first round election campaign was characterised by polarisation and featured 37 debates as well as numerous public events, the campaign for the second round was notable for the lack of any debate between the contenders and Colombians' general lack of enthusiasm (*see section X Media*). Petro's campaign strategy for the second round did not include public events, unlike in the first round, when his massive rallies struck a strong emotional chord with his supporters. Iván Duque continued the line he began in the first round, and focused his campaign on promoting his governmental programme, and avoiding direct confrontation with his presidential rival.

Electoral alliances for the second round of presidential elections

In the week following the first round, the two winning candidates, Iván Duque y Gustavo Petro, were backed by various political parties and movements. Duque received the support of the majority of the *Partido Liberal* and the *Partido Conservador*. In the days prior to the second round polling day, Duque's campaign team and the *Centro Democrático* discussed forming a wider alliance in Congress with the *Partido Cambio Radical* and its presidential candidate Germán Vargas Lleras, who supported Duque's candidacy, despite opposition from some of his party's Congress members. President Santos' *Partido de la U* did not back any candidate, but 15 Congress members from this party did endorse Duque's candidacy.

Once their candidate Sergio Fajardo fell out of the race, the *Polo Democrático* party announced its support for Gustavo Petro and his running mate Ángela María Robledo. Nonetheless, a branch of *Polo Democrático*, headed by Senator Jorge Enrique Robledo and which obtained the largest number of votes in the most recent elections to the Senate, opposed this endorsement and instead supported the option of the blank vote.

On 6 June, Gustavo Petro and Ángela María Robledo launched the *Gran Coalición por la Paz*, with the support of various Colombian political figures. Petro began to court moderate voters and abandoned his proposal for a constituent assembly, a move which also enabled him to receive support from the Senator-elect for the *Alianza Verde* and former mayor of Bogotá Antanas Mockus, as well as Claudia López, senator for the same party. On 8 June, Mockus and López officially backed Gustavo Petro.

Although some members of *Fuerza Alternativa Democrática del Común* (FARC) party unofficially supported Gustavo Petro, none did so publicly. On 4 June, the FARC leader, Rodrigo Londoño "Timochoenko", stated that he did not support the blank vote option and that he would vote for a candidate, and that the FARC had to support the candidate who could guarantee implementation of the Havana Peace accord.

C. VOTE-BUYING

The perpetual suspicions around vote-buying in Colombian election processes materialised on 21 June when the Office of the Prosecutor General denounced the existence of a nationwide network dedicated to vote-buying, involving more than 2000 people, and working in favour of different candidacies for Congress

RNEC software but that the Presidency did not authorise it and so the mission had been cancelled. A few hours after Petro's statement, the Ministry of Interior stated that the Colombian government had never been opposed to any EU mission. The minister emphasised that the format of any mission was up to the EU, and not the Colombian authorities.

in the concluded March legislative elections. The network was alleged to have offered gifts and money in exchange to voters as a means of influencing their choice. The network was said to include two candidates to the House of Representatives, Lilibeth Llinas (*Cambio Radical*) and Margarita Restrepo (*Centro Democrático*). Prior to this announcement, investigations were already underway regarding the senator for the department of Atlántico, Aida Merlano (*Partido Conservador*), accused of vote-buying and in pre-trial detention since 19 April as well as temporarily suspended from her functions by the Office of the Attorney General. The Prosecutor General's accusations even extended to RNEC civil servants who were accused of changing the composition of polling staff in Soledad (Atlántico). Although the Prosecutor General's investigations focused on the department of Atlántico, vote-buying networks were also alleged in other departments, such as Cauca, Antioquia, and the capital, Bogotá.

The Prosecutor General's investigations substantiated suspicions expressed to the EU EEM by civil society organisations and political parties in the departments Atlántico and Magdalena, where vote-buying practices are compounded by high rates of electoral migration, closely-related phenomena. (*see EU EEM Final Report on Legislative Elections*). Indeed, in places such as Ciénaga (Magdalena), the EU EEM was informed of several cases of vote-buying during the legislative elections and the first round of presidential elections, involving people known as "*mochileros*" (in reference to carrying a backpack) in close proximity to voting centres, offering cash to voters in exchange for their showing their voting certificate, a document given to people who have voted. Other clientelistic practices consisted of offering money in exchange for registering an identity card at a particular polling station and then a further reward at the end of election day. According to some interlocutors in these departments, vote-buying schemes involved some party representatives, who sought to see voters' choices and check that they voted for the candidate their support had been bought for.

Vote-buying is an offence in Colombia, classified as corruption of voters, and is punishable with up to eight years' imprisonment and fines of up to 1000 minimum salaries (approx. 231.000 euros).

D. ELECTION-RELATED VIOLENCE

All of the EU EEM's interlocutors agreed levels of violence had significantly decreased since the Peace Accord was signed by the Government of Colombia and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) in November 2016, and that this had enabled candidates to campaign more freely and in a more peaceful atmosphere than in previous presidential elections. In fact, these were the first elections for which it was possible to vote everywhere in the country, and for which there was no need to close or change polling station locations because of acts of violence. However, the accord had not put an end to all violence in Colombia, and there continue to be armed groups in the country. Still, the trend towards less violence was supported by two suspensions of activity by the *Ejército de Liberación Nacional* (ELN) on the two election days. (*See Background section.*)

Although a comparison between the election processes in 2014 and 2018 reveals a significant decrease in violence, in the weeks leading up to the first round the MOE reported an increase in assaults against civil society leaders and after the second round on 17 June, the MOE added that in terms of social violence, it could not confirm that the 2018 elections had been more peaceful than those in 2014.

Between the end of 2017 and mid-June 2018, the MOE recorded 189 acts of political and social violence during the legislative and presidential election campaigns. One example concerned a debate organised in Manizales (Caldas) on 18 April, which four candidates took part in (Iván Duque, Gustavo Petro, Germán Vargas Lleras and Humberto de la Calle), and which had to be suspended due to confrontations between supporters of the various candidacies in the surrounding area. In addition, seven candidates to Congress were assaulted in the departments of Antioquia, Arauca, Boyacá, Caquetá, Santander and the district capital of Bogotá. During the presidential campaign, incidents of political intolerance of presidential candidates or their supporters, including one murder, nine attacks (of which three were against party or campaign headquarters) and five cases of threats. Three of these incidents affected Gustavo Petro's campaign, two were aimed at the campaigns of Iván Duque and Germán Vargas Lleras, respectively.

Some of the most notable attacks perpetrated against candidates were those which targeted Gustavo Petro in Cúcuta (Norte de Santander) on 2 March (*see EU EEM Final Report on legislative elections*) or that aimed

at his campaign offices in Valledupar (Cesar), as well as the death threat made against Petro on Twitter by a former hitman associated with drug cartels. In addition, the MOE identified 76 municipalities in 17 departments at risk of election-related violence during the presidential elections and asserted that since the legislative elections on 11 March, they had recorded 143 acts of violence by armed groups in different parts of the country (in the departments of Chocó, Arauca, Guaviare and Catatumbo, as well as in the southern parts of Bolívar and the north of Antioquia), where the ELN continues to operate, as well as FARC dissidents and criminal gangs related to drug trafficking.

Violence continued to affect civil society leaders. The Colombian Office of the UN High Commission on Human Rights (OHCHR) reported a total of 441 attacks on social leaders in 2017: 84 murders of human rights defenders, and 23 murders of members of social organisations, among whom 14 women and three LGBTI activists. Since the beginning of the year, 16 alleged murders of social leaders have been recorded in the region of Urabá and the departments of Antioquia and Córdoba, which the Colombian office of the OHCHR is in the process of verifying at the time of this report's completion. If confirmed, this would constitute a significant increase on the same period of 2017.

IX. CAMPAIGN FUNDING

A. LEGAL FRAMEWORK FOR CAMPAIGN FUNDING

Campaign funding: a complex system without effective oversight

As mentioned in the EU EEM final report on the legislative elections, one of the biggest problems in Colombian election processes concerns the funding of political parties and election campaigns. According to numerous EU EEM interlocutors, campaign funding can be a form of corruption of the political system, particularly given that the systems for oversight and control are insufficiently robust to counter possible irregularities. In addition, the dispersal of a large number of legal provisions contributes to a lack of judicial clarity and order, a circumstance which has been actively exploited by political parties in order to avoid being sanctioned.⁶² In fact, applicable provisions regarding political funding are spread across 11 laws, 4 decrees, 14 CNE resolutions and 11 CNE notes.⁶³ Furthermore, the fact that there are two laws regulating political parties - the 1994 Law 130 and the 2011 Law - results in varying interpretations on which sanctions are applicable.

Colombia has a mixed system of private and public funding. Private funding for presidential election campaigns includes the candidate's own resources, income from public events, and loans, so long as these do not exceed the established spending limits. For presidential elections, contributions from corporate entities are not allowed, while contributions from private individuals cannot exceed 20% of total spending. Furthermore, presidential campaigns cannot receive any individual donation above 2% of the spending limited fixed by the CNE.⁶⁴

Public funding, for its part, is based on a system of reimbursement for each vote obtained, alongside a system of advances determined by the CNE, depending on budget availability. These two mechanisms make up the direct public funding in Colombia, while indirect public funding is granted through subsidies for the purposes of achieving media access.

⁶² Constitution, Law 57 de 1887, Law 130 de 1994, Law 136 de 1994, Law 996 de 2005, Law 1437 de 2011, Law 144 de 1994, Law 1474 de 2011, Law 1475 de 2011, Law 1712 de 2014, Law 1757 de 2015, Law 1778 de 2016, Law 1864 de 2017, Decree 2241 de 1986, Decree 2547 de 1989, Decree 624 de 1989, Decree 863 de 2006, CNE Resolution 2007-0330, CNE Resolution 2010-0285, CNE Resolution 2013-1586, CNE Resolution 2013-2544, CNE Resolution 2013-3097, CNE Resolution 2013-3619, CNE Resolution 2014-0004, CNE Resolution 2015-0865, CNE Resolution 2017- 0172, CNE Resolution 2017- 0173, CNE Resolution 2017- 0174, CNE Resolution 2017- 0175, CNE Resolution 2017-0170, CNE Resolution 2017-0171, CNE Note 2011-15897, CNE Note 2013-3270, CNE Note 2014-0124, CNE Note 2014-1513, CNE Note 2015-2096, CNE Note 2015-4140, CNE Note 2015-4394, CNE Note 2015-7546, CNE Note 2016-0982, DANE Certification – 2016, CNE Circular- PGN 2015-017, External circular 2014-029 *SuperFinanciera* and Note 2014001896-001 *SuperFinanciera*.

⁶³ Although these last are not binding, they define the scope and interpretation of certain provisions.

⁶⁴ Article 14 of Law 996/2005.

The CNE is the body responsible for oversight of campaign spending, which is regulated by means of complex legislation which establishes mechanisms to ensure equitable resources and a cap on campaign spending, alongside a system of advances and reimbursements, and a range of sanctions for non-compliance. In order to improve transparency, in 2011 the CNE launched an online system, called *Cuentas Claras* ('Clear Accounts'), which political parties and candidates must use to declare their income and spending. Although the system has enabled better knowledge about campaign funding, political parties' spending reports tends to be late and incomplete, while the CNE has tended to study and act on information in an inefficient way, mainly due to lack of human and material resources. The MOE considers that the funding system is not fit for purpose, given that it is not obliging parties to report the amount, source and use of their income, and therefore leaves the door open for illegal funding or spending above the established limits.

As stated in the EU EEM in its final report on the legislative elections, the CNE supervises political parties' financial reports. Sanctions provided-for by law include warnings, fines, suspension or cancellation of State funding, removal from elected office and suspension or cancellation of a party's registration. Although the law grants the CNE the right to audit income and spending at any time, in practice it does not have the technical, operational or budgetary resources to do so. Another obstacle in the way of investigating the source of parties' income is the fact that most spending is in cash, and many donations are in kind, with a reference value far below the normal market value. Lastly, the CNE does not have the power to lift banking secrecy.

The CNE's supervision is limited to reviewing parties' financial reports, without carrying out any investigation. The CNE's difficulty in acting independently of the parties which nominated its members acts as a further limit on its supervisory tasks. Finally, current legislation does not specify any deadline by which parties can correct their reports in funding and spending, which negatively affects the process of certifying the reports, and limits the transparency and efficiency of certification itself. The CNE Unit charged with overseeing parties' compliance with funding and spending regulations, the *Fondo Nacional de Financiamiento Político*⁶⁵, suffers from management and efficiency problems as a result of inadequate human and material resources. For the reasons above, the EU EEM is unconvinced that it is useful to maintain scrutiny of party finances within the CNE framework.

Since the approval of Law 1475/2011, no sanctions have been applied to any candidate or party for infringement of finance regulation in the context of legislative or presidential elections. EU EEM interlocutors assert that the lack of sanctions encourages financial irregularities.

Lastly, in an attempt to improve the transparency of election campaign funding, Law 1864/2017 introduced five new electoral offences. These offences include financing campaigns with illicit sources, violating spending caps, and omitting information about contributors to campaign funds. The EU EEM hopes that implementation of this new legislation may lead to a greater number of investigations and the application of applicable sanctions.

B. ELECTION CAMPAIGN FUNDING AND SPENDING

Campaign funding: insufficient traceability of candidates' campaign spending

CNE Resolution 2586/2017 set the ceiling on spending for the 2018 presidential campaign at 24,235,554,964 pesos for the first round (approximately 7,150,000 euros). For the second round, the limit is set at 11,335,756,166 pesos (approximately 3,350,000 euros). In both cases, the spending limit includes both private and public funding.

Presidential candidates who met the requirements established by laws /2005 and 1475/2011, were able to ask for an advance of 6,598,628,518 pesos (1,950,000 euros approximately). Of these, 4,528,470.552 pesos (approximately 1,318,000 euros) are intended for propaganda and the remaining 2,070,157.966 are for other campaign costs (approximately 600.000 euros). In case of a second round, the two candidates receive an advance, should they ask for it, of 3,962,411.733 pesos (approximately 1,170,000 euros). Two campaigns asked for advances in the first round: Iván Duque's and Humberto de la Calle's. Between 21 and 25 May,

⁶⁵ Article 38 of Law 130/1994, established the *Fondo Nacional de Financiación Política*, as an auditing system dependent on the CNE. See also CNE Resolution n°3619/2013, 12 December 2013.

Humberto de la Calle requested a further advance of 10% (2,423,555,496 pesos), raising his advance from 6,598,628,518 pesos to 9,022,184,014 pesos (approximately 2.710.000 euros). Iván Duque also requested a State advance of 6,598,628,518 pesos (approximately 1,980,500 euros).⁶⁶

The second component of public funding provided-for by law is the cost-replacement for all valid votes, which begins after elections have taken place. Every year, the CNE defines the cost of election campaigns, and on that basis fixes the value of each vote obtained, as well as fixing the campaign spending limits. For the 2018 presidential elections, for those candidates who requested an advance, reimbursement of costs was established at 2,760 pesos per valid vote (approximately 0.80 euros) for the first round, and 1,378 pesos (approximately 0.40 euros) for the second round. In the case of candidates who did not request any advance, the reimbursement was established at 5,625 pesos per valid vote (approximately 1.65 euros).

It is important to note that a candidate will not receive more than they have declared as campaign spending costs, even if the figure based on vote reimbursement is higher. Secondly, as indicated above, the value attributed to each valid vote is greater if the candidate does not request any advance payment. The following tables enable an approximate calculation of what Iván Duque and Gustavo Petro will receive in public reimbursement for campaign spending, based on their declared spending in the first and second rounds.

Amounts due through vote cost-replacement (first round)

CANDIDATE	TOTAL SPEND (12 JUNE)	TOTAL VOTES (CNE Res. 1413)	COST OF EACH VOTE	REPLACEMENT VALUE OF EACH VOTE	AMOUNT DUE THROUGH VOTE COST REPLACEMENT *
GUSTAVO PETRO	\$ 12,105,685,082	4,855,069	\$2,493	\$5,625 The candidate didn't request any advance.	\$27,309,763,125 *Although this is the figure obtained by multiplying votes obtained with the assigned value , the campaign will not receive more than it has declared as spent.
IVAN DUQUE	\$ 23,820,640,320	7,616,857	\$3,127	\$ 2,760 The candidate did request an advance.	\$21,022,525,320 *Advances must be deducted from this amount. *Given the campaign received \$6.598.628.518 in advance, the actual amount due is \$14.423.894.802

Source: *Transparencia por Colombia* (report updated to 20 June 2018)

Amounts due through vote cost-replacement (second round)

CANDIDATE	TOTAL SPEND (19 JUNE)	TOTAL VOTES (Prelim results 19 June, RNEC)	COST OF EACH VOTE	REPLACEMENT VALUE OF EACH VOTE	AMOUNT DUE THROUGH VOTE COST REPLACEMENT *
GUSTAVO PETRO	\$ 670,370,056	8,034,189	\$83	\$5,625 The candidate didn't request any advance.	\$ 45,192,313,125 *Although this is the figure obtained by multiplying votes obtained with the assigned value , the campaign will not receive more than it has

⁶⁶ According to EEM interlocutors during the last week of the campaign, Duque requested the advance to cover spending campaign costs, even if this meant receiving less reimbursement after the elections.

					declared as spent.
IVAN DUQUE	\$ 8,328,303,371	10,373,080	\$803	\$ 2,760	\$28,692,700,800
				The candidate did request an advance.	* This figure is obtained by multiplying votes obtained with the assigned value. However, the calculated amount is greater than the spending limit for the second round and in any case, the amount disbursed is not greater than the declared spend (minus advances), so the actual amount to be disbursed comes to \$4.375.891.371

Source: *Transparencia por Colombia* (report updated to 20 June 2018)

Although the system allows candidates to request advances, it penalises them if they do so. In addition, a CNE Resolution, in line with article 11 of Law 1476/2011 establishes that if the candidate requests an advance, and reaches the threshold of 4% of valid votes, the reimbursement will be significantly less than had he not asked for an advance. Furthermore, candidates receive advances with delays, which does not help ensure that all candidates compete on a level playing field. In fact, the large parties have no interest in requesting advances, preferring to benefit from the full reimbursement after the elections.

According to EU EEM interlocutors, the cost-replacement system has a limited impact on the electoral process, given that in Colombia candidates must inevitably resort to private sources of funding, if available. The fact that some candidates present transparent reports on their spending does not contribute to a reasonable level of political competition, since those who have significant resources, or indeed personal wealth, are *de facto* in an advantageous position as compared to their competitors.

Private funding is characterised by lack of transparency. All EU EEM interlocutors confirmed that political actors do not report on all the private contributions they receive, and this constitutes the biggest problem in the context of finance. Fundamentally, since it is not possible to know the total amounts provided to candidate in private contributions, it is impossible to ascertain the origin of contributions. This in turn facilitates the entry of illegal money in campaigns.

Transparencia por Colombia verified the campaign reports submitted to the *Clear Accounts* application. At the time of this report's closing, the available information was updated to 20 June 2018. The candidates who took part in the first round of the presidential elections have until 28 June to consolidate all campaign spending information in Clear Accounts. For their part, the campaigns for Iván Duque y Gustavo Petro, who competed in the second round, the deadline to consolidate information in Clear Accounts is 18 July 2018. With regard to first round spending limits, Iván Duque spent 98% of the maximum amount, German Vargas Lleras 62%, Gustavo Petro 50%, Humberto de la Calle 44%, Sergio Fajardo 33%, Viviane Morales 10%, Jorge Antonio Trujillo 0,5%, Piedad Córdoba 0,1%. The *Comité promotor del voto en blanco*, *Partido de Reivindicación Étnica-PRE*, appear as registered in the Clear Accounts application, but to date have not reported any income or campaign spending.

CANDIDATE	TOTAL INCOME	TOTAL SPEND	SPENDING AS % OF MAXIMUM ALLOWED
IVAN DUQUE Partido Centro Democrático	\$ 23.377.537.249	\$23.820.640.320	98%
GERMÁN VARGAS Mejor Vargas Lleras Partido Cambio Radical	\$15.718.700.000	\$15.091.414.702	62%
GUSTAVO PETRO G.S.C. Colombia Humana	\$14.468.357.000	\$12.205.685.082	50%

HUMBERTO DE LA CALLE Partido Liberal Colombiano	\$10.608.971.895	\$10.616.239.595	44%
SERGIO FAJARDO Coalición Colombia	\$8.767.902.546	\$8.107.934.047	33%
VIVIANE MORALES Partido Somos (ALAS)	\$241.558.183	\$241.558.183	10%
JORGE ANTONIO TRUJILLO Movimiento Político Todos Somos Colombia	\$ 120.582.000	\$ 120.581.765	0.5%
PIEDAD CORDOBA GSC Poder Ciudadano	\$30.000.000	\$24.636.101	0.1%
TOTAL	\$73.333.608.873	\$70.228.698.795	

Source: *Transparencia por Colombia* (report updated to 12 June 2018)

Campaigns' greatest costs were incurred on propaganda, transport and public events, followed by administrative costs. Although presidential campaigns cannot receive direct contributions from corporate entities, this prohibition is somewhat circumvented by the fact that political parties may contribute up to 20% of a campaign's maximum spend, and there are no restrictions on corporate donations to parties.⁶⁷ The CNE clarified⁶⁸ that only parties with legal status could make contributions to the presidential candidates they had put forward or were supporting. Given that political parties do not have to report where they receive private contributions from, a party's donation to a campaign is very difficult to trace.⁶⁹ The CNE confirmed to the EU EEM and to *Transparencia por Colombia* that the Clear Accounts application would soon be updated to include this fundamental element of traceability, which would enable greater transparency of the private funding system for campaigns. The EU EEM considers that this change should be a priority and should be reflected in legislation.

Campaign income and spending for the second round: an uncertain account balance

Based on the criteria established by Law 996/2005, CNE Resolution 2586/2017 fixed the ceiling on campaign spending for the second round.⁷⁰

According to the information available, as updated to 20 June 2018, Iván Duque declared income of 10,152,412,000 pesos (approximately 2,990,000 euros), and spending of 8,328,303,371 pesos (approximately 2,450,000 euros), amounting to 73% of the maximum allowed spending. Contrary to the first round, the Duque campaign has not reported any donations from individuals for the second round. As happened in the first round, the Duque campaign asked for an advance, of 3,952,412,000 pesos (approximately 1,160,000 euros). Seventy-one percent of the reported costs were spent on propaganda on the radio and television. For his part, Gustavo Petro has not yet reported any income, although he has declared that his campaign spent 670,370,056 pesos (about 198,000 euros). So far, 86% of the reported costs were related to electoral publicity. Surprisingly, the Petro campaign, which never asked for any advance, reports having spent just 6% of the maximum amount allowed.

⁶⁷ Constitucional Court decision n° C-1153/2005.

⁶⁸ CNE Resolution n°0989/2018.

⁶⁹ As *Transparencia por Colombia* reported in its report updated to 20 June, "the Iván Duque presidential campaign arranged several loans with the Centro Democrático party, which to date jointly amount to \$3.400.000.000 (\$2.700.000.000 pesos in the first round and 700.000.000 in the second). Faced with this reality, it remains necessary to establish the origin of these resources. As noted in previous reports, these monies do not belong to the political organisation, indicating that other persons or corporations have contributed to the campaign via the party. It is therefore important that the Duque campaign specify the details of the loan agreements, including agreed interests."

⁷⁰ In line with article 4 of CNE resolution 2586/2017 del CNE, where an advance is requested, 50% of it must be spent on political propaganda and the rest on other costs related to campaign activities.

Candidate	Total income (updated to 20 June)	Total spending (updated to 20 June)	% of the maximum campaign spending allowed (11.335.756.166 pesos)	Advance request for the 2 nd round
Iván Duque	\$10.152.412.000 (\$6.200.000 from private resources and \$3.952.412 as advance)	\$8.328.303.371	73%	YES (\$3.952.412.000)
Gustavo Petro	\$ 0	\$ 670,370,056	6%	NO

Source: *Transparencia por Colombia* (report updated to 20 June 2018)

Campaign funding: dispersal of legal provisions and lack of detail cause different interpretations, once again

Since Humberto de la Calle did not reach the required threshold (set at 4% of the valid votes), he does not meet the criteria for receiving public funding⁷¹ and should therefore return the advance he received. However, the applicable legislation is contradictory and imprecise regarding the obligation to return monies obtained. In fact, according to article 11 of Law 996/2005, all advances must be returned if the candidate did not reach the 4% threshold. In contrast, article 22 of Law 1475/2011 establishes that the beneficiary of any advance must return it in its entirety within three months of the declaration of results, except in the case of presidential elections. In this case, the candidate would not be obliged to return what was received as an advance, so long as it was spent in accordance with the law.

Although the CNE magistrates did not take a common position on the subject, a majority of those with whom the EU EEM discussed the subject tended to be in favour of the provision which favoured the candidate (as established in article 22 of Law 1475/2011). In any case, deciding on this subject will be the responsibility of the next CNE which will be nominated by the incoming Congress in September 2018. In the meantime, de la Calle cannot know if he will receive reimbursement or not, and in addition to his State advance, he had taken out a private loan of 1,500,000,000 pesos (approximately 450,000 euros). A crowdfunding campaign (#UnaVacaPorDeLaCalle) was launched to cover his debt, which raised 728,136,388 pesos (approximately 215,000 euros) before it closed on 19 June.⁷²

X. MEDIA

A. MEDIA LANDSCAPE

The Colombian Constitution guarantees freedoms of expression and of information (in its articles 16 and 20), as well as the freedom of association (in article 38) and freedom for journalism (article 73). The legal framework regulating the media is established by a collection of laws and regulations which provide the framework for audiovisual media and telecommunications. Among these, most noteworthy are Law 72/1989 on the right to public broadcast media, Law 14/1991 regulating broadcast media and Law 335/1996 on the establishment of private television. It is generally considered that the legal framework within which these media carry out their activities generally provides all necessary guarantees for journalists, professional media associations, and groups defending freedom of the press.

As highlighted in the EU EEM report on the legislative elections, Colombia has an extensive range of media including two national daily newspapers, local press in the main cities, public and private radio and television broadcasters at national, departmental and municipal levels, and numerous websites with political content.

B. FREEDOM OF EXPRESSION AND WORKING CONDITIONS FOR JOURNALISTS

In general, conditions are difficult for the media and journalists throughout the country have to face high levels of violence, including physical assaults and threats. (see *EU EEM Final Report on legislative elections*). At local level, threats tend to be more frequent and dangerous. Politicians and parties regularly demand censorship and defame journalists. Given the fear generated by such situations, self-censorship is common.

⁷¹ Article 11 of Law 996/2005 establishes that “In order to qualify for the reimbursement of vote costs, a presidential candidate must have obtained at least 4% of all valid votes cast. Whoever does not reach this threshold will not be entitled to State campaign funding through the vote-reimbursement system, and will have to return all State funding obtained.”

⁷² <https://vaki.co/vaki/UnaVacaPorDeLaCalle>.

In a positive development, threats and violent incidents have diminished since the signing of Peace Accord. False news is constantly spread through Whatsapp and Twitter, and contaminates Colombian public opinion, particularly during campaign periods.

C. ACCESS TO THE MEDIA IN ELECTORAL PERIODS

In order to make their programmes known and generate support, presidential candidates have the right to carry out various propaganda activities, both in public space and in the media. These dispositions can be found in Law 130/1994, Law 996/2005, Law 1475/ 2011 and some CNE resolutions. Presidential candidates' rights regarding access to the media include i) free airtime on private radio and television ii) free airtime on public radio and television iii) paid-for space on radio and television and in the printed press. In order to disseminate their manifestos, for one month starting not sooner than 60 days before the elections and ending not later than 8 days before polling, presidential candidates have the right to free airtime in private radio and television channels, paid for by the State, and allocated by a CNE draw. Finally, paid-for television services such as cable subscription companies may not broadcast any election propaganda related to the presidential race, even if they are transmitted by foreign channels.

For the first time, the CNE granted daily two-minute spots on primetime television to all presidential candidates and to the registered committee promoting blank votes, for one month between 9 April and 9 May.⁷³ On 9 April 2018, the candidates and the blank vote promoting committee all produced a five-minute spot which were to be broadcast across all State, public and private radio and television channels, to maximise the opportunity to transmit their government programmes. On 16 May, the presidential candidates and blank vote promoting committee appeared for 10 minutes each to close their campaign, and again these appearances were to be transmitted across all radio and television channels.

On 1 June 2018,⁷⁴ the CNE drew lots to assign television airtime to the two second round candidates. The assigned airtime was to be broadcast between 5 and 15 June by the four national television channels, the eight public regional television channels and the 21 local television channels. On 7 June, the two candidates were offered five minute appearances to present their programme, and on 15 June they were granted 10 minutes each to close the campaign.

D. CANDIDATE DEBATES

The first round election campaign included 37 debates between candidates, as well as over 80 public events which most candidates took part in. During the second round campaign period, both candidates were invited to three television debates, including a final face-to-face, which was due to be held by private television Caracol TV on 15 June. However, the candidates did not confirm their attendance at any of these debates, so eight public regional stations⁷⁵ invited the contenders to a debate on 14 June, extending the invitation to the three most important private national television stations, Caracol, Canal 1 and RCN. The three television stations accepted the proposal, as did Gustavo Petro.

Gustavo Petro stated, on 7 June, that Iván Duque had cancelled all the debates and that his behaviour was *"always the same, and due to fear of an in-depth debate about the situation in Colombia."* On the same day, Duque responded from Barranquilla stating he was ready for the debates, as he had been during the four months of the earlier campaign. However he did not officially confirm his attendance at any future debate.

On 13 June, the eight public regional television stations cancelled the debate given there was no agreement between the two candidates, as well as due to technical and logistical difficulties due to short notice and the lack of confirmation of attendance from one of the participants. The television channels explained that

⁷³ CNE Resolution n° 0887/2018, 27 March 2018.

⁷⁴ CNE press release 1 June n°196. https://twitter.com/CNE_COLOMBIA/status/1002655768619966466.

⁷⁵ Teleantioquia, Telecaribe, Telecafé, Teleislas, Canal TRO, Telepacífico, Canal Trece and Canal Capital. The debate was due to take place in the studios of Canal Capital en Bogotá.

they had a duty to neutrality, pluralism and impartiality and that the presidential debate could only be held if both candidates agreed to take part.⁷⁶

On 14 June, the President of *Coalición Petro Presidente* and the Minister of Interior⁷⁷ asked the CNE to decide whether Gustavo Petro had the right to demand a debate even if Iván Duque did not take part. The same day, the CNE failed to reach a decision by majority vote⁷⁸, and dropped the issue without a resolution.

From a strictly legal perspective, article 23 of Law 996/2005 establishes that during the presidential campaign, the political parties or movements, social movements or groups which register a candidate for the Presidency of the Republic, have the right to take part in three debates of 60 minutes each, at the request of all or some presidential candidates, covering the topics and following the agreement outline in the request.

Furthermore, the Constitutional Court stated that this obligation does not apply merely to the first round but also to the second round, since the law makes no distinction between them.⁷⁹ Taking these elements into account, the EU EEM takes the view, as publicly expressed by the MOE, that while Iván Duque has the right to not participate in a debate, his absence cannot infringe on candidate Gustavo Petro's right to insist that a debate be arranged by a public television station in accordance with article 23 and as interpreted by the Constitutional Court.

The Mission is not convinced of the need to ask the CNE to take a position, given that the Constitutional Court had already expressed itself clearly on the matter. In addition, the CNE's failure to decide created greater uncertainty regarding the application of the existing legislation on debates, and since it did not make use of its ample regulatory powers to comply with the law's provisions, it failed to support the aim of the debates, which is to inform voters about the political options and the competing candidates.

This high degree of uncertainty resulted in Gustavo Petro being present at the *Canal Institucional* television studios on the day before the second round of the presidential elections and, noting, after waiting for 15 minutes, that Iván Duque was not coming. Petro then carried out a discussion with some journalists present, as well as with some members of his campaign team, and this conversation was transmitted through the candidate's Facebook and Twitter pages. It is important to note that *Canal Institucional* did not broadcast the exchange, but rather, it continued to broadcast the pre-recorded spots prepared by both candidates. At the same time, Iván Duque and Martha Lucía broadcast from Duque's Facebook page, discussing their government programme for the following four years.

The EU EEM considers that debates between numerous candidates prior to the first round, and those between just two candidates before the second round, cannot be put into the same category. A debate between the two final candidates would have enabled people to be better informed when casting their vote in the second round. The EU EEM considers that this subject merits regulatory reform so that there be clarity in the future, and no CNE interpretation may affect that definite provision, which will naturally have to respect campaigning candidates' rights and responsibilities.

In conclusion, the EU EEM considers that the main aim of debates is to provide citizens with information about their electoral options and that, as such, this aim should take precedence over other considerations. In this respect, the media should have provided the facilities to enable the debates, leaving it to each candidate whether they choose to take part or not.

⁷⁶ The same day, former minister Carlos Holmes Trujillo, a member of Duque's campaign team asserted that the debate was unnecessary. In his opinion, voters had taken the opportunity to listen to all candidates during the 37 debates of the first round campaign and it was not necessary at this stage to listen to them individually.

⁷⁷ Speaking as President of the Election Monitoring and Standards Commission

⁷⁸ CEC article 20: " Modified. Law 96 of 1985, Article 7º. In CNE meetings, the quorum shall be half plus one of all members, and decisions in all cases shall be adopted by two thirds of all members."

⁷⁹ Constitutional Court ruling C-1153/05, 11 November 2005.

XI. PARTICIPATION OF VULNERABLE GROUPS

Colombia has signed and ratified the vast majority of international and regional conventions against discrimination against women, ethnic minorities, and people with disabilities. These include the International Convention on Elimination of all Forms of Racial Discrimination (CERD, 1996), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and the Convention on Rights of Persons with Disabilities (2006), among other international instruments. In the regional context, Colombia is a signatory to and has ratified Inter-American Convention on the granting of political Rights to women (1948), the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (A-68, 2013).⁸⁰

The 1991 Constitution recognises that all Colombians are equal before the law and have the right to be free of discrimination for reasons of gender or race, and it gives the State the responsibility of taking measures which promote equality for groups which have been discriminated against or marginalised, as well as to protect people with physical or mental disabilities.⁸¹

A. WOMEN'S PARTICIPATION

The Colombian voter register includes 18,725,205 women (50.81% of all entries). Although the proportion of women on the register is slightly higher than of men, matched against the most recent census data⁸² in 11 of the 32 departments and in Bogotá, more men were registered than women, which could indicate under-registration of women in these locations.⁸³ Given that eight of these 11 departments have overall low registration rates, it could be inferred that sub-registration concerns women more than men.⁸⁴ Nonetheless, it is not possible to establish what proportion of women turned out to vote as the RNEC has not provided data disaggregated by gender.

For the first time in Colombian history, the Vice-President of the country will be a woman - Martha Lucía Ramírez. Of the six candidacies in the first round of the presidential elections, three included women as candidates for Vice-President. Indeed, as well as Ramírez (*Centro de Democrático*), Ángela María Robledo ran with *Coalición Petro Presidente*, Claudia López ran for *Coalición Colombia Humana*, and Clara López for *Partido Liberal-ASL*.

Two women, Piedad Córdoba (*Movimiento Poder Ciudadano*) and Viviane Morales (*Partido Somos*) withdrew their candidacies on 9 April and 2 May respectively, removing the opportunity for Colombians to vote for a woman in the presidential election. Piedad Córdoba cited personal reasons for her withdrawal, while Viviane Morales referred to financial reasons. Both agreed that the media had discriminated against their candidacies, for example not inviting them to the presidential debates held in Barranquilla y Medellín.⁸⁵

B. PARTICIPATION OF INDIGENOUS AND AFRO-COLOMBIAN PEOPLE

Colombians who declare themselves to be indigenous or Afro-Colombian make up 4% and 11% of the population respectively.⁸⁶

⁸⁰ Colombia signed the A-68 in September 2014, but has not ratified it yet.

⁸¹ Article 13. Article 43 specifically emphasises the equal rights of men and women.

⁸² According to projections by the *Departamento Nacional de Estadística* (DANE), Colombia has a population of 48,203,405 people, of whom 24,130,117 (50.16%) are women. Colombia is currently carrying out a census, the first since 2005. <https://goo.gl/3ikLB3>.

⁸³ These departments are: Amazonas, Arauca, Caquetá, Casanare, Guainía, Guaviare, Magdalena, Putumayo, Sucre, Vaupés and Vichada. Source: RNEC.

⁸⁴ Page 225. Maps and electoral risks, MOE, February 2018.

⁸⁵ After she withdrew from the race, Morales backed Iván Duque's candidacy. Morales withdrew so late in the race – little more than 3 weeks before the first round – that ballots were being printed and she appeared on them. The RNEC decided that votes for Morales would be recorded for purely statistical purposes. Piedad Córdoba did not support any of the candidates who remained in the running. See <https://goo.gl/MYBiPK> and <https://goo.gl/evVczU>.

⁸⁶ Figures from the 2005 census, which included a checkbox for self-declaring ethnic origin. Other studies estimate that Afro-Colombians to make up closer to 30% of the population. The census currently underway also includes a checkbox for declaring ethnic origin.

Of the six candidate teams competing in the elections, only the *Todos Somos Colombia* movement put forward an Afro-Colombian candidate, Freddy Obando Pinillo, who ran as a candidate for the Vice-Presidency. Piedad Córdoba, of Afro-Colombian origins, asserted that her ethnicity had contributed to the reasons for her withdrawal.⁸⁷

In general, the obstacles faced by indigenous and Afro-Colombian communities, who traditionally experience high rates of poverty and marginalisation,⁸⁸ were not addressed by the presidential campaign agendas, beyond declarations made by the candidates.⁸⁹ In general, indigenous groups were better represented by Gustavo Petro's candidacy than others, as his coalition, *Petro Presidente*, included the indigenous party *Movimiento Alternativo Indígena y Social* (MAIS), and further, received the support of the *Organización Nacional Indígena de Colombia* (ONIC), one of the main indigenous institutions in the country.⁹⁰

Congressional election results in indigenous and Afro-Colombian constituencies

The indigenous and Afro-Colombian communities have special constituencies in the Senate and the House of Representatives, in which candidates with the corresponding ethnic origin compete, after they have been approved by the legally-constituted institutions of these communities (*see section 11.2 Participation of Indigenous and Afro-Colombian communities in the EU EEM Final Report on legislative elections*). Because the voter register does not differentiate between ethnicities and there is no specific ballot for these constituencies, voters choose themselves whether to vote for the special constituencies for indigenous people and Afro-Colombians or for the ordinary House and Senate constituencies. This approach could impact the representativeness of indigenous and Afro-Colombians, since any voter, regardless of ethnicity, can vote for the special constituencies, and at the same time, voters for the special constituencies are not able to vote for the ordinary constituencies, which is not in line with international best practice in this area.⁹¹ The combined effect of these two factors tends to distort the electorate which has the right to vote in the special indigenous and Afro-Colombian constituencies in the House and the Senate.⁹²

In past legislative elections, the blank vote has tended to be the most voted-for option in indigenous constituencies for the Senate (68,19%) and the House of Representatives (58,96%). Given that the Constitution provides for elections to be repeated if the blank vote wins a majority⁹³ it is arguable that the CNE should organise fresh elections in these constituencies, in application of this legal provision. Some EU EEM interlocutors have argued, however, that repeat elections are only due if the blank vote wins a majority in the whole elected body, not just in two constituencies. Others, in contrast, point to the particular nature of these constituencies and suggest this provides justification for holding new elections. At the timing of writing this final report, the CNE had not pronounced itself on the subject. Regardless of the decision taken, the EU EEM considers that a repeated election would highlight the weaknesses of existing provisions for ensuring representation of indigenous and Afro-Colombian communities, as it could be expected that all Colombians would be invited to vote in these hypothetical elections.

C. PARTICIPATION OF PEOPLE WITH DISABILITIES

The Electoral Code states that voters who require assistance may be helped by a person of their choice. Polling staff, party representatives, RNEC employees and public forces may not assist voters. The law does not limit how many people may be assisted by the same person, which may leave open an opportunity for possible coercion of people with a disability, and violations of their right to a secret vote.

⁸⁷ See <https://goo.gl/YQTX4t>.

⁸⁸ See <https://goo.gl/HSiwwK>.

⁸⁹ See <https://goo.gl/v8EhUf>.

⁹⁰ See <https://goo.gl/YxLgEb>.

⁹¹ "...It may also be foreseen that people belonging to national minorities have the right to vote for both general and national minority lists." Paragraph 23, Code of Good Practice in Electoral Matters. Venice Commission 2002.

⁹² The Senate has one indigenous-reserved constituency (two representatives) and the House of Representatives has another. Afro-Colombians have a special constituency in the House, with two representatives.

⁹³ Article 258, Constitution.

Some 1.2 million voters with a visual disability had the opportunity to vote without assistance, using ballots written in Braille, thanks to an agreement between the National Institute for Blind People (*Instituto Nacional de Ciegos*, INCI) and the RNEC. Braille ballots were available for voters who requested them in the voting centres, both in the first and second round of elections. According to the INCI, some 90,000 Braille ballots were distributed.

As happened in the legislative elections on 11 March, many voting centres were difficult to access for people with mobility restrictions. The authorities have not fully implemented the recommendations made to Colombia by the UN Committee on the Rights of People with Disabilities⁹⁴ the objective of which was to ensure that all election procedures, buildings and materials were accessible to all voters, whether in urban or rural areas.

D. PARTICIPATION OF LGBTI PEOPLE

Colombian society has a high degree of tolerance regarding sexual diversity, which is reflected in legislation which guarantees rights to political participation for LGBTI people, including the right to make gender amendments to the Civil Register and identity cards.⁹⁵ Although no candidate expressed negative views regarding the interests of LGBTI groups, some members of these groups expressed their concern to the EU EEM that a Duque victory could lead to reversals of some of the freedoms and guarantees achieved, given that Duque was supported by political parties and personalities of a conservative nature.

XII. NATIONAL AND INTERNATIONAL ELECTION OBSERVATION

Election observation in Colombia is regulated by CNE Resolution 447/1997, which establishes election observers' rights and responsibilities, and their requirement to be accredited by the CNE in order to carry out their duties. In addition, article 45 of the 2011 Law 1745 makes reference to observation organisations' right to monitor election processes in Colombia.

A network of civil society organisations committed to improving democratic processes exists in Colombia. A notable example concerns the *Misión de Observación Electoral* (MOE), which carried out long-term observation and published reports on the various stages of the election process. The MOE also actively participated in the Election Monitoring Committees at national and departmental level. For the first round election day, the MOE deployed 3,524 short-term observers to 523 municipalities, and for the second round on 17 June, it deployed 3,414 observers. The MOE observations contributed to generating trust in the process among political actors and, particularly, to dispelling suspicions of a possible fraud around the results forms, which affected the electoral mood between the two rounds. For its part, *Transparencia por Colombia* is dedicated to combating corruption and whose activities include drawing up reports on compliance with campaign financing policies.

The CNE accredited international missions from the European Union, the Organisation of American States (OAS), the Carter Center and UNASUR, among others. The OAS deployed 35 observers for each of the election rounds. Its preliminary statement following the second election day, the OAS highlighted the high turn-out and the lack of any candidate debates prior to the second round, and recommended that election-related legislation be better organised, and that deadlines be established for the submission of electoral appeals.

The CNE and RNEC also invited members of election administrations and other people connected to election observation, politics⁹⁶ and academia, to attend the two election rounds. These guests worked under the auspices of the *Misión de Observación Internacional*, which deployed two days before election days and whose activities were largely directed by the CNE and the RNEC, as well as receiving significant media coverage and institutional support. The EU EEM considers that the organisation and financial

⁹⁴ Final observations on initial report on Colombia, Committee on Rights of People with Disabilities, August 2016.

⁹⁵ Decree 1227 de 2015. Ministry of Interior.

⁹⁶ On 14 May, the CNE revoked the accreditation of one of its invited guests, Lorena Ruiz-Huerta, member of a regional parliament from Spain, for having clearly expressed her support for one of the two candidates in the second round. (Resolution 1439 /2018) <https://goo.gl/GYRHRV>. Participation of politicians inexperienced in election observation has opened a debate about how appropriate it is to include them as members of international observation missions.

support of an election observation mission by the election authorities is misleading regarding the objectives of independent election observation, in line with the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, which have been signed by the main international organisations with experience in this area.

XIII. ELECTION DAYS AND RESULTS ANNOUNCEMENTS (FIRST AND SECOND ROUNDS)

The EU EEM did not carry out systematic observation on the election days, although it did visit several voting centres and aggregation commissions in Bogotá and its outskirts, where it observed voting, counting and results consolidation processes. Both on the first and second election day, the Mission was present in the Joint Control Room (*Puesto de Mando Unificado*, PMU) at the Ministry of Interior, from where security and logistics activities were coordinated and where updates on the process were received regarding how voting was proceeding, as well as in the RNEC and CNE information centre, where (preliminary) results were collected and announced. Both election days were supported by 116,000 members of the police and the army, coordinated by the Ministries of Interior and Defence, “*Plan Democracia 2018*”, the main aim of which was to ensure that the elections could take place without disruption.

For both election days, the RNEC installed biometric verification devices in 4,714 voting centres in 15 locations, principally in the Caribbean region. These devices enabled identification of voters and prevented impersonation. Voting took place over the course of eight hours (from eight in the morning until four in the afternoon), and, contrary to good electoral practices, there was no provision to allow people still queuing at closing time to vote.

Just as in the March elections, the RNEC launched a system implemented by subcontracted companies to collate and announce preliminary results within a few hours of the close of voting, based on results forms at the 96,724 polling stations in the country and abroad. Information was communicated by telephone to national data processing centres. The preliminary results only had informative value and could not be considered official, unlike the results processed by the aggregation commissions at municipal, departmental and national levels.

Nonetheless, the preliminary count enabled voters and candidates alike to be swiftly informed about which candidates would pass to the second round, and who won the presidential elections. The RNEC invested significant financial and human resources in the preliminary count. Thus, within a few minutes of the close of polling in both rounds, a clear election result was available, which provided a degree of certainty and clarity to the elections. In contrast, the official results, which are the basis of the proclamation of results and any appeals, receive much less attention and resources. In fact, at the time of writing, the CNE has still not declared either the results nor the winning candidates from the March legislative elections (*see section XIV Election Appeals*).

First round (27 May 2018)

A. OPENING AND VOTING

Voting took place in a calm atmosphere throughout the country, and according to the information provided by the Ministry of Interior, there were no incidents worth mentioning. The vast majority of polling stations opened at the time foreseen, (08:00), although there were some slight delays in Ituango and Turbo (Antioquia) and Aguachica (Cesar). About 400 polling stations had to be moved due to weather conditions, in the departments of Amazonas, Antioquia, Arauca, Bolívar, Boyacá, Casanare, Caldas, Cesar, Huila, Magdalena, Meta, Risaralda, Santander and Norte de Santander.

In the voting centres visited by the EU EEM, a festive atmosphere and sense of democratic maturity prevailed, and a great number of voters were present: together with the high number of consultations on the RNEC internet page with information about where to vote, this presaged a high turn-out.

The RNEC accredited 194,142 candidate representatives, of whom 58,549 represented Iván Duque, 58,319 represented Gustavo Petro, 45,152 were present for Vargas Lleras, 16,248 for Sergio Fajardo and 14,811 for

Humberto de la Calle. Although no candidate was able to place representatives in all 95,224 polling stations in the country, the fact that most of these were in large voting centres meant that representatives were able to monitor more than one polling station each, thus guaranteeing the candidates' right to be present during voting and counting. MOE observers, who observed throughout the day, found that candidate representatives were present in 72% of polling stations they visited.

The EU EEM noted that in the polling stations visited, the layout of the polling station and the location of the voting cubicles did not sufficiently ensure privacy when marking ballots. Although this was an inadvertent mistake, on some occasions vote secrecy was compromised. Polling station workers, some of whom had previous experience, demonstrated sound knowledge of their duties, although some did not sign the back of ballots as procedures require.

B. COUNTING AND ANNOUNCEMENT OF PRELIMINARY RESULTS

Polling staff began counting votes at four in the afternoon, once the polling stations were closed. Although procedures were followed in the majority of polling stations visited, the EU EEM noticed that a large number of ballots were annulled when voters had marked all checkboxes for a blank vote (one for each constituency). These errors cannot be attributed to either the voters or polling staff, who applied procedures correctly, but rather to the confusing layout of the ballot papers. Once counting was complete at polling stations, the municipal aggregation commission began the aggregation of results.

In parallel, the transmission and announcement of preliminary results began, based on the figures on results forms. Within just 90 minutes of closing, results based on 95% of polling stations were available, and three hours later, at 21.15, results from 100% of the polling stations were available.

Second round (17 June 2018)

A. OPENING AND VOTING

As in the first round election day, the atmosphere in voting centres was calm and festive. Due to weather conditions, some 230 polling stations had to be moved in the departments of Antioquia, Meta and Cauca. Polling station staff generally followed procedures correctly, indicating a good understanding. However, problems with the layout of polling stations and the voting cubicles persisted, potentially compromising secrecy of vote. The MOE, which deployed a similar number of observers as in the first round, evaluated opening and voting procedures negatively in 106 polling stations observed, due to electoral materials packs that arrived open, ballots that went unsigned on the back, and minor issues concerning observer accreditations.

Candidates deployed 102,202 representatives to polling stations and aggregation commissions. Of these, 61,858 represented Petro and the remaining 55,116 represented Duque. Just as on 27 May, no candidate was able to send representatives to all polling stations and commissions, although the MOE noted a significant increase in their overall presence, finding there were representatives in 87% of polling stations visited.

B. COUNTING AND ANNOUNCEMENT OF PRELIMINARY RESULTS

On this occasion, the RNEC issued a new instruction detailing the correct way to complete results forms, so as to avoid a repetition of the errors and corrections which had occurred in the first round. The instruction also reminded polling staff that they should allow candidate representatives to photograph the three parts of results forms (*E-14 claveros*, *E-14 delegados* and *E-14 transmisión*). Counting at polling stations was swift and procedures were generally followed in the polling stations visited by the EU EEM.

As in the first round, the system for transmitting and announcing preliminary results made it possible to announce the winner and President-elect of Colombia in a record time of 45 minutes from the close of polling, with 95% of stations counted. By nine in the evening, the RNEC announced the results based on 100% of polling stations.

XIV. ELECTION COMPLAINTS AND APPEALS

A. ELECTION APPEALS

The institutions responsible for determining election appeals are the CNE and the Fifth Section of the State Council.⁹⁷ The Electoral Code and CNE resolutions guarantee the right to contest issues regarding voter and candidates registration, voting and counting procedures, and the official declaration of results by the CNE. Since the CNE is an administrative body, its decisions can be appealed before the Fifth Section of the State Council, which is the court of last resort.

Complaints regarding the vote and counting at a polling station must be presented in writing by a political party or the representative of a political movement at the polling station concerned. Such complaints must be resolved at the polling station after counting is concluded. Complaints may also be submitted while aggregation is being carried out by the district, municipal or auxiliary aggregation commissions or during the general aggregation carried out by CNE agents. Candidates or their representatives can demand a recount. If the aggregation commission at municipal level refuses to carry out a recount, an appeal can be presented to the departmental aggregation commission, in accordance with the provisions of the CEC. The departmental aggregation commission cannot refuse the recount if there is a difference of at least 10% in the aggregation form. The CNE has jurisdiction to decide on complaints regarding decisions by municipal and departmental aggregation commissions.

As the CNE has clarified on several occasions through its resolutions, the aggregation process is an incremental and preclusive administrative process, whereby complaints and petitions are heard at each stage, and the results can be adjusted or corrected in line with said complaints before the aggregation passes to the next level and, finally, to the CNE to declare. It is worth highlighting that aggregation commissions are composed of judges, which increases the rigor of decisions during the municipal and departmental aggregation stages.

In principle, the complaints system provides clear guarantees and ensures that only consolidated results (form E-26) are presented to the CNE in the final phase. However, the fact that results are presented in consolidated form removes records of any changes made by aggregation commissions at municipal or departmental level, thus limiting traceability. Indeed, the fact that 130,540 votes were redistributed among several candidates in the first round and 38,632 were redistributed in the second round, is a clear indication that the CNE needs to clarify where and how these changes took place, and that candidates should have access to the documents which record said changes. In an election with very tight results, such changes could determine the attribution of an elected seat. For these reasons, the EU EEM urges the CNE to make further efforts to improve the transparency of the results consolidation process.

Despite the system of preclusion applied in Colombia, it remains that in every election, the CNE receives a large number of complaints which it must resolve.⁹⁸ For example, following the legislative elections on 11 March, more than 4000 complaints were received, which resulted in over 300,000 amendments on aggregation forms.

On 6 June, during the declaration of results for the first round, the *Coalición Petro Presidente* presented 27 complaints to the CNE alleging discrepancies between results forms (E-14) and consolidation forms (E-24) from 1,705 polling stations in 27 of the country's departments. On 8 June, the CNE examined the forms, found discrepancies in 84 of them, and ordered that 238 votes be added to Gustavo Petro's tally and that 257 be removed from Duque's. The CNE found no inconsistencies in the remaining forms. The CNE concluded in its 8 June Resolution n°1412/2018 that the complaints had no impact on the first round final results and declared the results in Resolution n°1413/2018 on the same day. No complaints were presented regarding the second round results and the CNE declared the results on 21 June, in Resolution n°1453/2018.

⁹⁷ Articles 237 and 265 of the Constitution. Article 6 of Law 163/1994, and article 187 of the CEC.

⁹⁸ Article 192 of the CEC. The CNE is the competent body for resolving complaints which are based on any of the circumstances outlined in article 192, with reference to the facts and the law, so long as the complaints were presented in writing during the stage of the process in question by the candidates or their legally registered representative.

From a purely procedural perspective, applicable legislation presents structural problems which merit attention. The State Council itself has pronounced its view on the viability of establishing deadlines for presenting complaints to the CNE. Surprisingly, existing legislation does not foresee deadlines within which complaints must be submitted on the grounds established in article 192 of the CEC. The lack of a timeframe for submitting complaints leaves the results declaration process in limbo, as new complaints may be submitted at any time, thus preventing the conclusion of the administrative process.

For this reason, by means of Resolutions n°744/2018 and 1399/2018, the CNE established a protocol for national elections in which it is stipulated that any complaint based on article 192 of the CEC must be presented and evidenced in writing within the day following the posting of consolidated results forms. Once this deadline passes, the CNE will convene to analyse the evidence considered necessary to resolve the complaints.

Although this protocol solves one of the main procedural problems inherent to the complaints system, it stipulates a deadline only for the complainant, and does not limit the time in which the CNE must resolve the case, in theory allowing the matter to run past the dates provided-for in the Constitution for the inauguration of the President of the Republic (7 August) and opening of the new Congress (20 July). In practice, legislative and presidential elections follow the calendar dictated by the Constitution, and thus, the election administration has to adapt its resolutions to this calendar.

A bizarre side-effect of this asymmetrical timeframe for complaints is that the CNE must suspend its examination of complaints related to the legislative elections – traditionally very numerous – in order to concentrate on complaints related to the presidential elections, not least those that arise from the first round of the elections. Still, it took just 27 complaints, submitted by Gustavo Petro following the first presidential round, to block the CNE's complaints administration, as was reported by the body's own president during a session of the National Election Monitoring Commission. As a result, the CNE was obliged to declare the official results of the first round on 8 June, just three days before the start of voting from abroad. Although the second round was held three weeks after the first according to the Constitution, this time-gap is in fact reduced to two and a half weeks, given that voting from abroad begins on the Monday prior to election day in Colombia.

For this reason, it is crucial that the law-makers not only modify and possibly limit the bases upon which challenges to the results may be submitted to the CNE, considering that the incremental system already offers sufficient guarantees, but also that they establish clear deadlines for both election processes to conclude, before the respective inaugurations. The problem is so evident that, at the close of this report in 11 July 2018, the CNE had still not declared the official results of the legislative elections of 11 March 2018, and further, that only the clear and incontestable results of the second round of presidential elections ensured there was no overlap between the two complaints processes.

In Colombia, judicial oversight of decisions related to the election process is under the jurisdiction of administrative appeals, headed by the Fifth Section of the State Council. The Council exercises control over the criteria for annulment, acting as an administrative jurisdiction rather than an electoral one, given that CNE declarations of results are, *per se*, an administrative decision. Although article 264 of the Constitution provides that the administrative appeals jurisdiction determine challenges to annul results within a year, in practice some cases are resolved by the Fifth Section in a period of time which is incompatible with the principles of electoral justice which, as the State Council itself has asserted in its rulings, depend on swiftness and timeliness.⁹⁹ These principles require that there be certainty regarding the legality or

⁹⁹ State Council's 8 February 2018 ruling n° 11001-03-28-00-2014-00117-00 on the call to annul submitted by the MIRA party in 2014. The MOE identified, alongside the MIRA case, other cases on which the State Council ruled with significant delay: i) For the 2002 – 2006 elections, a decision was only issued in July 2005, three years after the inauguration of the Congress; ii) 2006-2010 period, a decision was issued in July 2009, three years later. The State Council annulled the certificates declaring the Senate election results and, on that basis, called for a public hearing in order to hold new elections iii) 2010- 2014 period, a decision was issued in May 2013, again three years later. As in the previous case, the Council annulled the Senate's election and called a public hearing to arrange new elections iv) 2014- 2018 period, the decision was communicated on 8 February 2018, one month before the

otherwise of electoral decisions, not only for the sake of those elected, but also for the sake of people who exercised their right to choose their representatives.

In electoral matters, judicial certainty is an essential principle which should prevail over the slow procedural pace of electoral complaints resolution in Colombia. The State Council¹⁰⁰, which is the State body charged with the resolution of electoral controversies, should bow to the fundamental principle of respecting deadlines, which is of particular relevance in electoral matters, in order to guarantee not only judicial security but, further, the respect of the elected authorities' terms.

Another problem in the Colombian electoral context concerns the question of injunction petitions. Injunctions are judicial orders restraining a person or authority from beginning or continuing an action threatening or invading the legal right of another, or compelling a person or authority to carry out a certain act.¹⁰¹ From a purely analytical perspective, injunction petitions should not be applicable in electoral matters, and should only be used when the petitioner has no other means of having his rights respected, or in order to avert irreversible harm, in which case he should provide evidence that demonstrates the need for the intervention of the court. In order to avoid the capricious use of injunctions during election processes,¹⁰² the EU EEM considers it would be opportune, as the State Council has recommended,¹⁰³ to introduce the option of a petition for legal protection of fundamental rights, which would be final.

B. ELECTORAL OFFENCES

As the EU EEM to the Congressional elections pointed out, the August 2017 reform of the Penal Code through 1864/2017 increased electoral offences from 11 to 16. This law was an important step in the fight against corruption in elections, giving the Office of the Attorney General (*Procuraduría General de la Nación*, PGN) and the Office of the Prosecutor General (*Fiscalía General de la Nación*, FGN) a new instrument for controlling and sanctioning irregularities and crimes.

The Immediate Reception Unit for Electoral Transparency (*Unidad de Recepción Inmediata para la Transparencia Electoral*, URIEL), the main existing body to receive election-related allegations, received, in the first round of presidential elections, 1,239 complaints during the course of election day, most of which concerned voter intimidation. The Office of the Attorney General received 130 complaints, alleging vote-buying, voter intimidation, and public servants taking part in campaigning, among others. Most of these complaints were submitted in Bogotá, and in the departments Atlántico, Norte de Santander and Valle del Cauca. For its part, the Office of the Prosecutor General detained 110 people for alleged election-related offences.

During the second round, URIEL received 519 complaints during voting hours, most of which were concerned with voter intimidation and vote-buying. This is less than half the number of complaints submitted in the first round. The Office of the Attorney General received 160 allegations of vote-buying and public servant participation in campaign events among others. Most of these complaints were presented in Bogotá, Santander, Antioquia, Atlántico and Bolívar. The Office of the Prosecutor General detained eight

election of a new Congress and five months from the end of the Congress' constitutional mandate. The State Council decided to annul the election of three Congress members and attributed their seats to the MIRA party.

¹⁰⁰ The same State Council responded to the Special Electoral Mission's recommendations and asserted that "In order to ensure decisions are available, ideally before office is taken, it is proposed that an annulment challenge go back to having the validity it did before the introduction of Law 1437 / 2011, that is to say, 20 days."

¹⁰¹ Injunction petitions are provided-for by the Decree nº2591, of 19 November 1991, issued by President César Gaviria, by virtue of the powers granted by transitional article 5 of the Constitution. The Decree-Law was later regulated by Presidential Decree 306 of 19 February 1992, issued by virtue of the powers granted by article 189, paragraph 11 of the Constitution.

¹⁰² For example, on 25 June, just 48 hours before the second round, the Tribunal of Cundinamarca rejected the application for an injunction presented by a Colombian citizen who sought to have the blank vote checkbox removed from the second round ballot, and asked the RNEC to cancel the registration of Marta Lucia Ramírez as Iván Duque's vice-presidential candidate.

¹⁰³ The State Council stated that it would be opportune to "create the special of action electoral protection, which would be provided-for in the Code of Administrative Procedure and Administrative (*Código de Procedimiento Administrativo y de lo Contencioso Administrativo*) for decisions of electoral substance,- according to the authority which determines it – which within a limited timeframe would resolve the legality of administrative decisions issued by the electoral authority in such cases, which would be final, and issued before polling."

people for alleged electoral offences in the departments of Bogotá, Antioquia, Tolima, Cauca y Arauca, and declared that these had been the most peaceful elections in recent years. In Santa Marta (Magdalena), the Office of the Prosecutor General investigated a case of more than 300 vehicles from the *Colombia Humana* movement which had allegedly illegally transported a group of voters who supported Gustavo Petro. In Medellín (Antioquia), an agent for *Colombia Humana* was arrested with 36 previously-marked ballots, presumably used for training party representatives. The case is still under investigation.

XV. ELECTION RESULTS

A. ANALYSIS OF THE PRESIDENTIAL ELECTION RESULTS

First round (27 May 2018)

The 27 May presidential elections were the first to be held in Colombia since the signing of the Peace Accord in November 2016. For the first time in an election of this type, it was possible to hold voting throughout the country, without the obstacles which conflict had posed in the past. This new circumstance, combined with the high degree of polarisation, the wide range of political choice and the increase in the voter register, led to the highest ever turn-out for presidential elections (54.22%) and, in absolute terms, 6.5 million new voters as compared to the same elections in 2014.

As the polls predicted, no candidate won an absolute majority of valid votes, as a result of which the two most voted-for candidates Iván Duque (*Centro Democrático*) with 39.36% and Gustavo Petro (*Coalición Petro Presidente*), with 25.09%, passed to the second round of elections. Next in the results were Fajardo (*Coalición Colombia*) with 23.78% (just over 250.000 fewer votes than Petro), Germán Vargas Lleras (*Coalición #Mejor Vargas Lleras Ante Todo Colombia*) with 7.30%, Humberto de la Calle (*Coalición Partido Liberal-ASI*) with 2.05%, Jorge Trujillo (*Todos Somos Colombia*) with 0.34%, and the promoters of the blank vote (*Partido de Reivindicación Étnica*, PRE), with 0.16% of the votes.

Duque won in 23 of the 33 administrative areas (32 departments and the district capital of Bogotá), principally in the valleys of the centre of the country, while Petro led in nine, principally in the Pacific and some Caribbean departments: Nariño, Cauca, Chocó, Putumayo, Sucre Vaupés, La Guajira and Atlántico. With regard to the main cities, Fajardo came first in Bogotá, with 33,77% of the vote, and in Cali (Valle del Cauca), with 32.55%. Duque won in Medellín (Antioquia) with 53.4% and Bucaramanga (Santander), with 39.67%. Petro won in Barranquilla (Atlántico) with 38,07%, and in Cartagena (Bolívar), with 45.37%.

Although all opinion polls predicted to some degree or other that there would be a second round with Duque and Petro, none predicted Fajardo's result, which was 8% higher than the polls had predicted, and extremely close to reaching the second round. With regard to Vargas Lleras, the good results garnered by his party *Cambio Radical* in the legislative elections did not extend to support for his candidacy, which can be explained by the tendency for presidential votes to be more free, and less subject to clientelist patterns than legislative or local elections.

Shortly after the RNEC preliminary results indicated an irreversible trend, all candidates accepted the results, including Gustavo Petro, who had in previous weeks doubted the credibility of the Colombian electoral institutions. Both Duque and Petro, aware of Fajardo's enormous volume of votes, rushed to congratulate him, in a move aimed at attracting his supporters in the second round. For his part, Humberto de la Calle expressed regret that he and Fajardo had not been able to come to an agreement before the first round, in order to avoid dividing their votes. Indeed, support for these two candidates together was slightly higher than that obtained by Petro.

Second round (17 June 2018)

Just as in the first round on 27 May, turn-out was record-breaking, and was the highest-ever recorded in a second presidential round since 1994, with 53.92% of voters casting a vote for either Iván Duque or Gustavo Petro, only 0.30 % lower than on 27 May.

Iván Duque clearly won the elections, with 54.03% of all valid votes, while Petro obtained 41.77%. The blank vote, supported by former candidates Sergio Fajardo and Humberto de la Calle, gained 4.2% of the vote, which indicates that the vast majority of voters in both rounds opted for one of the contenders.

Iván Duque won in 24 of the 33 administrative areas, almost the same ones as in the first round. Gustavo Petro won in eight departments in the Pacific and Caribbean regions. As for the most densely-populated areas, Petro won in Bogotá (53.35%) and in the Valle del Cauca (51.76), while Duque gained an incontestable victory in Antioquia (72.53%).

The large difference between Duque and Petro (2,358,240 votes, 12.26%) contributed to the swift acceptance of the results, as did the swift publication of preliminary results. Thus, 90 minutes after the close of polling, once the preliminary results showed an irreversible trend, Gustavo Petro recognised his defeat and Iván Duque's victory.

It is notable that Petro obtained 3,185,380 more votes than in the first round, which indicates that he was able to capture much of the support which had gone towards Sergio Fajardo and Humberto de la Calle. For his part, Iván Duque obtained 2,781,832 new votes, which can be attributed to the centre-right alliance he managed to create around himself. All the same, his results were not as robust as some political analysts and most polls had predicted.¹⁰⁴

In addition, the blank vote (807,924, 4.20%) was not as great as expected, although it was double the proportion reached in the first round.¹⁰⁵ Fajardo and De la Calle's calls for blank vote were only partially heeded. Poll forecasts, which had predicted 10% for the blank vote, did not materialise.¹⁰⁶

In his first speech as President-elect, Duque called for unity and made clear that Colombia should leave behind the previous months' polarisation. Duque asserted that his priority would be the fight against corruption and clientelism and qualified his respect for the peace accords, although he focused on their implementation on respect for the victims of the conflict and a reform of transitional justice. He also announced that his government would be gender-balanced. For the first time in Colombian history, the vice-president will be a woman, Martha Lucía Ramírez.

Gustavo Petro highlighted the political value of the more than eight million votes he obtained and announced he would take up his seat in the Senate to lead the opposition to Duque.¹⁰⁷ Petro also emphasised that after the 17 June elections, a 'real opposition' had been born and that he would work to consolidate his political movement with a view to winning presidential elections in 2022, as well as the local election in 2019. He also asserted that he would defend the peace and the implementation of the accords, and that he would oppose the judicial reform which Duque announced during the campaign.

B. DECLARATION OF OFFICIAL RESULTS

On 8 June, 10 days after the first round election day, the CNE announced the official results¹⁰⁸ and declared Iván Duque, with 7,616,857 votes (39.36%) and Gustavo Petro, with 4,855,069 (25.09%), as the two candidates who would go on to compete in the second round of elections on 17 June. Sergio Fajardo obtained 4,602,916 votes (23.78%), Germán Vargas Lleras 1,412,392 (7.30%), Humberto de la Calle 396,151 (2.05%), Jorge Antonio Trujillo 65,767 (0.34%). Finally, those who promoted a blank vote (*Partido de Reivindicación Étnica*, PRE) received a total of 30,128 votes (0.16%) and Viviane Morales, who withdrew after the ballot papers were printed, obtained 36,138 votes (0.19%).

¹⁰⁴ Most opinion polls published between the two election rounds predicted a difference of 16.5 % and 20% between Duque y Petro.

¹⁰⁵ In the first round, there were 338,581 (1.75%) blank votes.

¹⁰⁶ The eight opinion polls published between the two election rounds predicted an average of 10.48% of blank votes. (Max. 18,3% - min. 5,5%).

¹⁰⁷ Article 1 of the *Acto Legislativo 02 / 2015* provides for the candidate who comes second in the presidential election to be granted a seat in the Senate, while the vice-presidential candidate who comes second is granted a seat in the House of Representatives.

¹⁰⁸ Resolution 1413, 8 June.

There were notable differences between the preliminary results and the official CNE results, which resulted in 130,540 votes being re-attributed. Thus, the official results recorded that Duque, Petro and Fajardo obtained, respectively, 47,164, 3,815 and 13,220 more votes than in the preliminary count. Conversely, Humberto de la Calle and Jorge Trujillo received 3,029 and 9,847 fewer votes than in the preliminary results. The most notable case concerned the promoters of the blank vote, whose vote dropped by almost 50% (from 60,312 in the preliminary count to 30,128 in the official results.) According to a CNE statement, there were 17,865 more valid votes, 2,506 fewer blank votes, 1,643 fewer spoilt votes and 9,260 fewer unmarked ballots. Although these differences did not have any impact on the outcome, neither with regards to the two second-round contenders, nor on the 4% threshold which determines the right to campaign funding, they did nonetheless contribute to doubts regarding Colombia's method for counting and aggregating votes. In legislative or municipal elections, such variations would have been sufficient to change the attribution of seats.

The RNEC alluded to technical reasons to explain the more significant differences. Thus, the more than 47,000 votes which the CNE statement attributed to Duque and the more than 30,000 votes which it removed from the blank vote promoters were due, according to the RNEC, to errors in the completion of results forms and the preliminary results transmission forms. Although it is natural that the official results do not coincide 100% with preliminary count, corrections and recounts undertaken later in aggregation commission in accordance with the law,¹⁰⁹ the reasons give by the RNEC do not adequately explain the identified discrepancies.

In the same way, though to a lesser degree, differences also emerged after the CNE announced the official results and declared Iván Duque and Martha Lucía Ramírez President-elect and Vice-President-elect, on 21 June 2018.¹¹⁰ Thus, Iván Duque obtained 25,609 more votes than those recorded in the preliminary count, while Gustavo Petro gained 6,260. According to the official results, Duque obtained 10,398,689 votes (53.98%) and Petro, 8,040,449 (41.81%). Equally, the total number of valid votes was greater in the official results: 19,247,062 in the official results, compared to the 19,215,637 in the preliminary count. The attribution of 38,632 votes was changed.

XVI. RECOMMENDATIONS

The EU EEM submits the following recommendations to improve election processes in Colombia, for the consideration of the election authorities, the political parties and movements, and civil society. Some of these recommendations require significant legal reform, while others could be implemented by applying existing rules more stringently, or in a different manner. In any case, a wide political and institutional consensus for the implementation of recommendations would help ensure that the new rules and procedures be widely-accepted, efficient and long-lasting. The recommendations presented in this report were discussed with the election authorities and other political, institutional and civil society actors in Colombia, and were evaluated in light of their aims, as well as regional and international principles and good practices in electoral matters.

The recommendations that the EU EEM considers to be of greatest priority are marked in bold.

Institutional framework

- In order to reduce the politicisation of the selection and composition of the Consejo Nacional Electoral (CNE), the selection of its members could be carried out by in a process less determined by the parties represented in Congress, in which universities or other independent institutions could present candidates, including civil society groups. In addition, given the administrative and technical nature of the position, it would be appropriate for those who aspire to CNE council membership to be qualified in related subjects, not have carried out political party roles or been in elected office during at least the two previous legislative mandates. Further, in order to preserve the independence of CNE members from the legislative***

¹⁰⁹ The CNE reported that recounts of polling station took place in 18 departments.

¹¹⁰ Resolution 1453, 21 June.

and executive branches of government, the CNE mandate periods should not coincide with legislative periods.

Legal framework

- 2. It would be advisable to revise certain elements of Colombian legislation so that i) it fully adhere to the regional and international principles and obligations Colombia has committed to; ii) it resolve the current inconsistencies between the Constitution, the Electoral Code, (which predates the Magna Carta), and the other laws and regulations which apply to the election process; iii) the Electoral Code be updated and streamlined, producing a consolidated; iv) certain legal gaps be filled, and v) that mechanisms be introduced to ensure effective application, oversight and control.**

Election administration

- 3. Considering that the law permits a polling station to be operative even when there are just two polling workers, the EU EEM suggests that the RNEC consider reducing the maximum permitted number of polling workers per polling station, and, at the same time, condition their work on having attended training sessions, in such a way as to reduce the number of polling workers who have not been trained. In parallel, given their particular responsibilities, the RNEC could consider special training for the presidents of polling stations, and, insofar as possible, consider selecting them separately from general polling staff. Finally, the fact that it is a civic duty to work as a polling worker should not prevent the duty from being subject to certain incentives, such as remuneration for duty served.**
- 4. Given that the Constitution grants the CNE budgetary and administrative independence, it would be recommendable for the CNE to be provided with greater resources in order to ensure it can fulfil its duties. By the same token, the disparity between the RNEC's resources and the CNE's would be reduced.**
- 5. It would be advisable to grant the CNE the necessary resources to function efficiently, including those necessary to establish delegations outside of Bogotá, and to strengthen its permanent staffing.**
- 6. The EU EEM considers that the RNEC should facilitate independent and comprehensive audit of its software, the scope and methodology of which should be agreed with political parties and movements. At the same time, and in line with the State Council's ruling, whether or not the use of the software is in-house or out-sourced, the RNEC should maintain the ownership and unlimited access to software, so that such crucial parts of the election process as are aggregation and announcement of final results not be exclusively in private hands.**
- 7. It would be recommendable that polling stations use a single results form (E-14), which would avoid staff having to copy out the results several times and could thereby also help to avoid transcription mistakes. This single form could afterwards be used to the ends intended in the counting and aggregation procedures, including publication on the RNEC website and availability for party representatives. In addition, in order to improve security and prevent later manipulations, it would be opportune to have the numbers on forms written in words as well and in figures, as is currently done on the E-26 aggregation forms.**
- 8. It would be useful to separate the creation of new voting centres from Colombia's administrative organisation, thereby enabling the RNEC to increase the number of voting centres in rural areas and facilitating access for voters. At the same time, the RNEC should consider increasing the number of urban voting centres, which would allow both them to be less densely filled, and to bring voting centres close to people's residences.**

Voter register

- 9. In order to ensure the most inclusive register possible, outreach programmes should be intensified to provide citizens with identity cards in those areas and segments of the population most affected by low rates of civil registration.**

10. *It would be useful to introduce technical and regulatory measures to enable all those eligible to be able to cast a vote, including those who turn 18 between the close of the register and polling day.*

Funding

11. ***Although in the short term it would be useful to increase the resources available to the CNE's Fondo Nacional de Financiamiento Político, the EU EEM considers that in the long term it would be recommendable that a different State body be responsible for monitoring, oversight and sanctioning in matters of party funding. Given its role as controller of public finances, it would be appropriate for the General State Comptrollership (Contraloría General del Estado) to take on this crucial role in the election process, guaranteeing its independence and transparency, as well as benefitting from the fact that this body already has offices throughout the country.***
12. *In the EEM's view, it would be advisable and opportune to: i) strengthen direct public funding by providing the advance necessary for campaign activities, without incurring a penalty ii) increase indirect public funding by partial State funding of advertising in the media; iii) reduce and limit private funding, particularly in local elections where the influence of clientelist networks is greatest. For example, a limit could be introduced on the absolute value of donations from the candidates' own resources, private individuals and corporations, bank loans and political parties' own resources.*

Media

13. *The EU EEM considers that the matter of debates in the second presidential election round merits regulatory clarification, in order to make clear, without any CNE interpretation necessary, what the status of such debates is, taking into account the rights and responsibilities of political campaigns and the superior interest of the Colombian people to be able to cast a well-informed vote.*

Polls

14. *The publication of a technical datasheet would enable better evaluation of opinion polls' reliability. The media would therefore be in a position to submit to self-regulation regarding the publication of opinion polls during the campaign, including the obligation to reveal not only the most basic data (sample type and size, dates, margin of error) but also other information such as geographic spread, rate of response, number of attempts made by interviewers, and whether interviews were supervised. Media organs could sign a code of conduct prior to the campaign, wherein they committed to publishing the full technical information relating to opinion polls.*

Vulnerable groups

15. *It would be advisable to guarantee the rights of indigenous and Afro-Colombian communities to vote for their constituencies. For this purpose, it would be useful to establish a voter register exclusively for the special constituencies, without prejudice to indigenous and Afro-Colombians' right to vote in ordinary constituencies, in line with international best practice in democratic elections.*

Election day

16. *It would be opportune to extend voting hours and, in line with best practice, to introduce regulation that ensures people already queuing at closing time be able to vote. Both measures would reinforce the effective exercise of right to vote.*

Election results

17. *It would be advisable to systematically verify the procedures in place for the counting and aggregation of preliminary and official results, in order to dispel the doubts that arise when there are differences between the two sets of results, which in principle should only occur if aggregation commissions (escrutadores) carry out recounts or revisions of results forms.*

Declaration of results and challenges to results

18. ***Given that the incremental system for challenging results already offers sufficient guarantees, the EU EEM recommends that lawmakers limit the possible causes for annulment claims before the CNE, and***

that specific deadlines be established so that the entire legislative and presidential election processes are complete before the duly elected take office.

19. ***The EU EEM recommends that legislation clearly include the State Council in the architecture of the election process, maintaining its competence in matters of oversight of electoral decisions and events, but imposing deadlines which will allow the election process to conclude before the newly-elected take office, thus ensuring that the electorate's choice is respected.***
20. In order to avoid the capricious use of injunctions in election processes, the EU EEM consider it would be useful to introduce the option of a petition for legal protection of fundamental rights, which would be final.

XVII. LIST OF ABBREVIATIONS

CCC. Corte Constitucional de Colombia - *Constitutional Court of Colombia*

CEC. Código Electoral de Colombia - *Colombian Electoral Code*

CIDH. Comisión Interamericana de Derechos Humanos - *Inter-American Court of Human Rights*

CNE. Consejo Nacional Electoral – *National Election Council*

CSJ. Corte Suprema de Justicia – *Supreme Court of Justice*

EEAS. European External Action Service

EEM. Election Expert Mission

ELN. *Ejército de Liberación Nacional* - *National Liberation Army*

EPL. *Ejército de Liberación Popular* - *Popular Liberation Army*

EU. European Union

FARC. Fuerzas Armadas Revolucionarias de Colombia – *Revolutionary Armed Forces of Colombia*

FARC. Fuerza Alternativa Revolucionaria del Común – *People’s Alternative Revolutionary Force*

FGN. Fiscalía General de la Nación - *Office of the Prosecutor General*

FLIP. Fundación para la libertad de Prensa – *Free Press Foundation*

MOE. Misión de Observación Electoral - *Election Observation Mission*

MIRA. Movimiento Independiente de Renovación Absoluta - *Independent Movement of Absolute Renovation*

OAS. Organization of American States

PGN. Procuraduría General de la Nación – *Office of the Attorney General*

RNEC. Registraduría del Estado Civil – *Civil Registry*

UNIORE. Unión Interamericana de Organismos Electorales – *Inter-American Union of Electoral Bodies*

URIEL. Unidad de Recepción Inmediata para la Transparencia Electoral - *Immediate Reception Unit for Electoral Transparency*

XVIII. ANNEXES

Annex I: Table of recommendations

This table gathers the recommendations from the two Election Expert Missions deployed to Colombia for the legislative and presidential elections in 2018, submitted for the consideration of the national authorities, the electoral institutions, political parties and movements, and civil society organisations.

To facilitate their identification, they are colour-coded:

- Recommendations exclusively concerning the legislative elections: - **Pink**
- Recommendations exclusively concerning the presidential elections: – **Orange**
- Recommendations concerning both elections – **Blue**

N°	Reason	Recommendation	Is legislative reform required? YES/NO	Applicable international and regional instruments applicable /best practice (BP)	Legal Framework provisions affected	Institution to which recommendation is addressed
Institutional framework (Recommendation n°1)						
1	Reduce the politicisation of the nominations process and of the composition of the <i>Consejo Nacional Electoral</i> (CNE). <i>(pages 10, 11, 23, 24 and 25 EU EEM Final Report, Presidential Elections Colombia)</i>	The selection of its members could be carried out in a process less determined by the parties represented in Congress, in which universities or other independent institutions could present candidates, including civil society groups. In addition, given the administrative and technical nature of the position, it would be appropriate for those who aspire to CNE council membership to be qualified in related subjects, not to have carried out political party roles or been in elected office during at least the two previous legislative mandates. Further, in order to preserve the independence of CNE members from the legislative and executive branches of government, the CNE mandate periods should not coincide with legislative periods.	The part of the recommendation regarding the selection and nomination of CNE members DOESN'T require any legislative changes. The part referring to the mandate periods DOES require legislative changes.	United Nations International Covenant on Civil and Political Rights (ICCPR) Office of the High Commissioner for Human Rights (OHCHR), General Comment 25, paragraph 20: “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”	Constitution: articles 264 and 265. Electoral Code articles 9 to 25.	Congress CNE
Legal framework (Recommendations n°2 and 3)						

2	<p>Despite the numerous political and electoral reforms which have been approved in recent years, none has achieved a complete revision of the legal framework, resulting in distortions in the functioning of the legal framework. Nonetheless, electoral legislation is spread among several laws, rulings by the Constitutional Court and the State Council as well as administrative regulations and resolutions by the election administration, the <i>Consejo Nacional Electoral</i> (CNE), which can make it difficult to be sure which legislation is applicable. This dispersal clearly affects the principle of legal certainty and as such constitutes a weakness in the legal framework for elections.</p> <p><i>(pages 8 and 9 EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 23 and 24 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ For these reasons, It would be advisable to revise certain elements of Colombian legislation so that</p> <p>i) it fully adhere to the regional and international principles and obligations Colombia has committed to;</p> <p>ii) it resolve the current inconsistencies between the Constitution, the Electoral Code, (which predates the Magna Carta), and the other laws and regulations which apply to the election process;</p> <p>iii) the Electoral Code be updated and streamlined, producing a consolidated;</p> <p>iv) certain legal gaps be filled, and</p> <p>v) that mechanisms be introduced to ensure effective application, oversight and control.</p>	<p>YES. Constitutional and legislative reform.</p>	<p>ICCPR, article 2.2: Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”</p> <p>UN Human Rights Council, Resolution 19/36 of 2012 (A/HRC/RES/19/36), paragraph 16: “Calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by (c) Ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness.”</p>	<p>Constitution Electoral Code Statutory Laws CNE Resolutions</p>	<p>Constitutional Court Congress CNE RNEC</p>
3	<p>The threshold for attributing seats in the House of Representatives varies according to the number of votes in each departmental constituency. Each of these departments elects at least two members of the House, and more in accordance with its population.</p> <p>In addition, there is a great disparity between the number of voters per seat in the different departments, which varies from 316,132 in Bogotá and 10,799 in Vaupés, which could affect the principle of equality of vote, as provided-for in Colombia’s International commitments on democratic elections.</p> <p><i>(page 6 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ Measures could be considered in order to better guarantee that votes have an equal weight in the election of the House of Representatives, in lines with Colombia’s International commitments on democratic elections.</p>	<p>YES. Constitutional and legislative reform</p>	<p>ICCPR, General Comment 25, paragraph 21: “Any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”</p> <p>Venice Commission. Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev), paragraph 2.2 (iv) : “The permissible departure from the norm</p>	<p>Constitution: article176. Legislative Act 2/2015: Article 6.</p>	<p>Constitucional Court Congress</p>

				should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)		
Election administration (Recommendations n°4,5,6,7,8 and 9)						
4	<p>Polling station duty is considered a civic duty. However, it is not obligatory to attend training sessions. According to the RNEC, more than 20% of poll workers were not trained, which contributed to poor understanding of voting and counting procedures on both election days. The selection of the six polling workers for each polling station is supposed to be random, so as to ensure that their work is independent and free of undue influence.</p> <p><i>(pages 12 and 13, EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 18, 19 y 20 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ Considering that the law permits a polling station to be operative even when there are just two polling workers, the EU EEM suggests that the RNEC consider reducing the maximum permitted number of polling workers per polling station, and, at the same time, condition their participation on having attended training sessions, in such a way as to reduce the number of polling workers who have not been trained. In parallel, given their particular responsibilities, the RNEC could consider special training for the presidents of polling stations, and, insofar as it possible, consider selecting them separately from general polling staff. Finally, the fact that it is a civic duty to work as a polling worker should not prevent it from being subject to certain incentives, such as remuneration for duty served.</p>	<p>YES. RNEC Resolution and small amendments to some provisions of the Electoral Code</p>	<p>UN Assembly General Resolution A/RES/68/164(2013), point 6: “The Assembly General notes the importance of adequate resources for the administration of efficient and transparent elections at the national and local levels, and recommends that Member States provide adequate resources for those elections, including considering the possibility of establishing internal funding, where feasible.”</p> <p>UN Convention Against Corruption, article 5.1: “Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”</p> <p>Inter-American Convention Against Corruption (Art.III.12) recommends “the study of further preventive measures that take into account the relationship between equitable compensation and probity in public service. “</p>	<p>Electoral Code articles 26, 33, 41, 48, 56, 60, 99, 101, 102, 104, 105, 112, 113, 114, 116, 122, 135, 136, 142, 151, 163, 164, 166, 172, 187, 192 and 200.</p> <p>Law 163/1994: article 5.</p> <p>Decree Law 1010/2000, article 5 paragraph 11.</p>	<p>Congress RNEC</p>
5	<p>While the RNEC has significant resources at its disposal in order to discharge its responsibilities, the CNE lacks its own budget and administrative autonomy, despite these being guaranteed by the Constitution. This makes it difficult for the Council to fulfil its mandate of overseeing the election process, as well as aggregating and announcing the</p>	<p>→ Given that the Constitution grants the CNE budgetary and administrative independence, it would be recommendable for the CNE to be provided with greater resources in order to ensure it can properly fulfil the duties it is charged with by law. By the</p>	<p>NO, although approval of regulations would be necessary.</p>	<p>ICCPR, article 2.2: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to</p>	<p>Constitution: articles 264 and 265.</p> <p>Electoral Code: articles 11 to 25.</p>	<p>Congress RNEC CNE</p>

	<p>official results.</p> <p><i>(pages 37, 38, 39 and 40, EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 18, 19 and 20 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p><i>same token, the disparity between different electoral authorities could be reduced.</i></p>		<p>adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”</p> <p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>UN Assembly General Resolution A/RES/68/164(2013), point 6: “<i>The Assembly General</i> notes the importance of adequate resources for the administration of efficient and transparent elections at the national and local levels, and recommends that Member States provide adequate resources for those elections, including considering the possibility of establishing internal funding, where feasible.”</p>		
6	<p>The CNE has no offices outside of Bogotá, which makes it difficult to fulfil its mandate of oversight. These administrative difficulties are all the more evident during legislative and local elections, when the CNE should be present in the departments and municipalities it is in charge of, and, to a lesser degree, during presidential elections. In addition, the CNE lacks a genuine administrative and executive structure to carry out the Council’s day-to-day work.</p> <p><i>(page 11, EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 18, 19 and 20 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→It would therefore be advisable to grant the CNE the necessary resources to function efficiently, including those necessary to establish delegations outside of Bogotá, and to strengthen its permanent staffing.</p>	<p>NO, although approval of regulations would be necessary.</p>	<p>UN Assembly General Resolution A/RES/68/164(2013), point 6: “<i>The Assembly General</i> notes the importance of adequate resources for the administration of efficient and transparent elections at the national and local levels, and recommends that Member States provide adequate resources for those elections, including considering the possibility of establishing internal funding, where feasible.”</p>	<p>Constitution: articles 264 and 265.</p> <p>Electoral Code: articles 11 to 25.</p>	<p>Congress RNEC CNE</p>
7	<p>The RNEC outsources the counting and</p>	<p>→The EU EEM considers that the RNEC</p>	<p>NO</p>	<p>UN Assembly General Resolution</p>	<p>Electoral</p>	<p>RNEC</p>

	<p>announcement of preliminary results to several companies, including the software necessary for these tasks. The RNEC dedicates significant resources to this activity, while the official count, the only one with legal validity, is provided with far fewer resources. This disparity has been highlighted by political parties and civil society organisations, and they have also expressed concern about the fact that many tools, such as the software used for the transmission and announcement of preliminary results, are the property of private companies and not the RNEC itself, leading to a gradual loss of confidence in the electoral institutions’ ability to provide reliable results. Further, the State Council’s ruling in the ‘MIRA’ case urged the RNEC to purchase the necessary software to carry out these tasks, and the lack of a genuine independent audit of the system would have improved candidates’ confidence in said system.</p> <p><i>(pages 11 and 12, 13, 14, 15 and 16, EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 18, 19 y 20, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>should facilitate independent and comprehensive audit of its software, the scope and methodology of which should be agreed with political parties and movements. At the same time, and in line with the State Council’s ruling, whether or not the use of the software is in-house or out-sourced, the RNEC should maintain the ownership and unlimited access to software, so that such crucial parts of the election process as are aggregation and announcement of final results not be exclusively in private hands.</p>		<p>A/RES/68/164(2013), point 6: “The Assembly General notes the importance of adequate resources for the administration of efficient and transparent elections at the national and local levels, and recommends that Member States provide adequate resources for those elections, including considering the possibility of establishing internal funding, where feasible.”</p>	<p>Code: articles 26, 33 and 41 and contracts with the companies who currently own the software.</p>	
8	<p>Election results are recorded in a form in three parts: the first part, named <i>E-14 Claveros</i>, is sent to the aggregation commission for consolidation and is the only one of the three parts with legal validity. The second part, known <i>E-14 Delegados</i>, is scanned for the RNEC to publish on its website. The third part, <i>E-14 Transmisión</i>, is handed to the companies that carry out the preliminary results processing. Thus, polling staff have to fill out the results three times, resulting in transcription errors and, thereafter, possible accusations of fraud, when the three parts of the form do not coincide. This situation is worse in the legislative and municipal elections, when filling out the results forms is more complicated.</p> <p><i>(pages 13, 14, 15 y 16, EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>→ It would be recommendable that polling stations use a single results form (E-14), which would avoid staff having to copy out the results several times and could thereby also help to avoid transcription mistakes. This single form could afterwards be used to the ends intended in the counting and aggregation procedures, including publication on the RNEC website and availability for party representatives. In addition, in order to improve security and prevent later manipulations, it would be opportune to have the numbers on forms written in words as well and in figures, as is currently done on the E-26 aggregation forms.</p>	NO	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR, article 2.2: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its</p>	<p>Constitution: articles 152 part f and 266.</p> <p>Electoral Code: articles 142, 143, 144.</p>	RNEC

	<p>(pages 18, 19 y 20, EU EEM Final Report, Legislative Elections Colombia)</p>			<p>constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”</p> <p>ICCPR, article 19: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”</p>		
<p>9</p>	<p>The RNEC concentrated large number of polling stations in massive voting centres in the most densely-populated cities. In contrast, many rural areas continued to lack polling stations within easy reach of voters’ residences and those departments with the greatest number of municipalities with difficult-to-access polling stations registered notably lower turn-outs than the national average. Both the dense concentration of people in large voting centres and the distance between voting centres in rural areas tended to limit access to centres for citizens, and as such could have limited free exercise of suffrage.</p> <p>(pages 16 and 17 EU EEM Final Report, Presidential Elections Colombia)</p> <p>(pages 14, 15 and 16, EU EEM Final Report, Legislative Elections Colombia)</p>	<p>→It would be useful to separate the creation of new voting centres from Colombia’s administrative organisation, thereby enabling the RNEC to increase the number of voting centres in rural areas and improving ease of access for voters. At the same time, the RNEC should consider increasing the number of urban voting centres, which would allow both them to be less densely filled, and also, in fact, to bring voting centres close to people’s residences.</p>	<p>YES. Legislative reform.</p>	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR, General Comment 25, paragraph 11: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.”</p>	<p>Article 266 of the Constitution.</p> <p>Statutory Law 1475/2011: articles 5 and 6.</p> <p>Electoral Code: article 85.</p> <p>Decree-Law 2241/1986 article 26 para 2º, 89 and article 99.</p> <p>Decree-Law 1010/2000: articles 5 para 11 and article 25.</p> <p>RNEC Resolutions n°5733/2018 and n°2597/2018</p>	<p>Congress</p> <p>RNEC</p>

Voter register (Recommendations n°10, 11 and 12)					
10	<p>Although parties did not question the reliability of the voter register, it nonetheless includes an undetermined number of deceased and emigrants, and does not include almost 800,000 people who are not identity card holders.</p> <p><i>(pages 16 y 17 EU EEM Final Report, Presidential Elections Colombia)</i> <i>(pages 14, 15 y 16, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→In order to ensure the most inclusive register possible, outreach programmes should be intensified to provide citizens with identity cards in those areas and segments of the population most affected by low rates of civil registration.</p>	NO	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR, General Comment 25, paragraph 11: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.”</p> <p>American Convention on Human Rights (ACHR) article 23 (b) Every citizen shall enjoy the following rights and opportunities b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.”</p>	<p>Electoral Code: article 66 and 76 to 87.</p> <p>Congress RNEC</p>
11	<p>Since citizens cannot obtain an identity card until they turn 18, those who reach this age in the two months prior to an election, after the close of the election register, are not included in the voter register and therefore cannot vote.</p> <p><i>(pages 16 and 17 EU EEM Final Report, Presidential Elections Colombia)</i> <i>(pages 14, 15 and 16, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→In this respect, it would be useful to introduce technical and regulatory measures to enable all those eligible to be able to cast a vote, including those who turn 18 between the close of the register and polling day.</p>	YES. Legislative reform.	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR, General Comment 25, paragraph 11: “Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.”</p> <p>American Convention on Human Rights</p>	<p>Constitution Article 98.</p> <p>Electoral Code: articles 59, 66 and 76 to 87.</p> <p>Congress RNEC</p>

				<p>(ACHR) article 23 (b) Every citizen shall enjoy the following rights and opportunities b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.”</p> <p>Venice Commission. Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev), paragraph 7 (vi): “A supplementary register can enable persons who have changed address or reached the statutory voting age since the final register was published to vote.”</p>		
12	<p>Given there is no clear definition of electoral residence and that citizens do not have to provide any particular evidence, changes of residence can be linked to fraudulent practices. According to EEM interlocutors, fraudulent changes of residence and, by corollary, changes of voting centre, are linked to vote-buying. The adscription of voters to relatively small numbers of voting centres makes it easier to monitor voters and make them dependent on others to transport them to voting centres. This can be exploited by those who would buy votes. <i>(pages 16 y 17 EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 14, 15 y 16 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ Requests to change electoral residence should include reasonable evidence of genuine residence, such as utility bills or a rental contract.</p>	<p>NO. Although complementary regulation would be required.</p>	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR, General Comment 25, paragraph 11: “If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.”</p>	<p>Electoral Code: articles 76, 77 and 78 Law 163/94: article 4 Law 1864/2017.</p>	<p>Congress CNE RNEC</p>
Candidate registration (Recommendations n°13, 14, 15 and 16)						
13	<p>Political parties maintain their official registration as a party by obtaining at least one seat on the House of Representatives, or at least three per cent of the votes to the Senate, a threshold which was imposed in 2013 in a bid to reduce the number of political parties. On this basis, a number of political parties could lose their status as registered parties following the legislative elections.</p>	<p>→The EU EEM considers it important that the requirements to maintain legal registration not be so demanding, as this could discourage or limit political participation.</p>	<p>YES. Legislative reform</p>	<p>ICCPR, article 22.2: “No restrictions may be placed on the exercise of [the right to association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and</p>	<p>Legislative Act 1/2003: article 108.</p>	<p>Congress</p>

	<p>(pages 16, 17 and 18, EU EEM Final Report, Legislative Elections Colombia)</p>			<p>freedoms of others.”</p> <p>ICCPR, General Comment 25, paragraph 26: “The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process.”</p> <p>Guidelines on Political Party Regulation, Venice Commission and OSCE Office for Democratic Institutions and Human Rights, paragraph 88: “In some states, a political party that does not meet a minimum-results threshold in an election loses its status as a registered political party. This practice is far from ideal and should not be included in relevant legislation. If a party originally met all requirements for registration, then it should be able to continue party activities outside of elections.</p>		
<p>14</p>	<p>Registration of coalitions for the legislative elections generated debate at the CNE as the Constitutional precept had not been developed in a law. Revoking these coalitions would have implied striking out 170 candidates, and the CNE ultimately decided to register the coalitions. The EEM considers that this decision was in line with Colombia’s international commitments regarding the right to stand.</p> <p>(pages 16 and 17, EU EEM Final Report, Legislative Elections Colombia)</p>	<p>→ It would be useful to regulate coalitions between parties and political movements at all levels of election through statutory law.</p>	<p>YES. Legislative reform.</p>	<p>ICCPR, article 22.2: “No restrictions may be placed on the exercise of [the right to association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”</p>	<p>Law 1475/2011: article 29</p>	<p>Congress</p>

15	<p>For the elections to Congress there were 140 applications for registration and just three were approved. Although the number of supporting signatures varies in accordance with population sizes, the greatest number of signatures required to register a candidacy for Congress is 50,000, and this requisite is significantly more demanding for Citizen Groups (<i>Grupos Significativos de Ciudadanos, GSC</i>) than for parties.</p> <p><i>(pages 16 y 17, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ Consideration could be given to making registration requirements the same for Citizen Groups as for political parties.</p>	<p>YES. Legislative reform.</p>	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR General Comment 25, paragraph 16: “Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory.”</p> <p>ICCPR General Comment 25, paragraph 17: The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy.”</p>	<p>Law 1475/2011: articles 28 to 33</p>	<p>Congress CNE</p>
16	<p>A particularly high-profile case concerned the striking-off of a candidate registration for election to the House of Representatives for Sucre, that of Karina Espinosa, the Minister of Interior’s sister, on the grounds that the Constitution made her ineligible for reasons of family relations. This case opened a debate on the interpretation of this constitutional precept.</p> <p><i>(pages 29 and 30, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ Although this subject highlights a general concern about nepotism in Colombian politics, this reasons for ineligibility could be questioned given the interpretation of national law and in relation to Colombia’s international commitments on the right to stand. i</p>	<p>YES. Legislative reform.</p>	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR General Comment 25, paragraph 15: “The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and</p>	<p>Constitution article. 179 Electoral Code: art. 204</p>	<p>Congress CNE</p>

				reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.“		
Campaign funding (Recommendations n°17 and 18)						
17	<p>Although an extensive legal framework provides tools to monitor and sanction activities related to campaign funding, the dispersal of regulatory texts across many instruments creates a general disorder which has been frequently exploited by political parties to avoid being sanctioned. In addition, the CNE has been characterised by inefficiency and a lack of technical and budgetary resources, impeding its ability to fulfil its duty of auditing and sanctioning parties. This results in an inefficient system and raises the question of whether there are limits to the Council's willingness to make objective decisions and to be independent of political parties and Congress.</p> <p><i>(pages 23 to 29 EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 9, 10 and 11, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→Although in the short term it would be useful to increase the resources available to the CNE's Fondo Nacional de Financiamiento Político, the EU EEM considers that in the long term it would be recommendable that a different State body be responsible for monitoring, oversight and sanctioning in matters of party funding. Given its role as controller of public finances, it would be appropriate for the General State Comptrollership (Contraloría General del Estado) to take on this crucial role in the election process, guaranteeing its independence and transparency, as well as benefitting from the fact that this body already has offices throughout the country.</p>	YES. Legislative reform.	<p>ICCPR, article 2.2: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”</p> <p>UN Convention Against Corruption, article 5.1: “Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”</p> <p>UN Convention Against Corruption, article 7.3: “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance</p>	<p>Constitution, Law 57 de 1887, Law 130 of 1994, Law 136 of 1994, Law 996 de 2005, Law 1437 of 2011, Law 144 de 1994, Law 1474 of 2011, Law 1475 de 2011 Law 1712 of 2014, Law 1757 de 2015, Law 1778 of 2016, Law 1864 de 2017, Decree 2241 of 1986, Decree 2547 of 1989, Decree 624 of 1989, Decree 863 of 2006, Resolution CNE 2007-0330, Resolution CNE 2010-0285, CNE Resolution2013-1586, CNE Resolution2013-2544, CNE Resolution2013-3097, CNE Resolution2013-3619, CNE Resolution2014-0004, CNE Resolution2015-0865, CNE Resolution2017-0172, CNE Resolution2017-0173, CNE Resolution2017-</p>	<p>Congress CNE Contraloría General del Estado</p>

				<p>transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”</p> <p>UN Human Rights Council, Resolution 19/36 of 2012 (A/HRC/RES/19/36), paragraph 16: “Calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by (c) Ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness.”</p> <p>Venice Commission (VC) Code of Good practice in the Field of Political Parties CDL-AD (2009)021, (paragraphs 39, 40, 41, 42, 43 and 44)</p>	<p>0174, CNE Resolution2017-0175, CNE Resolution2017-0170, CNE Resolution2017-0171, Concepto CNE 2011-15897, Concepto CNE 2013-3270, Concepto CNE 2014-0124, Concepto CNE 2014-1513, Concepto CNE 2015-2096, Concepto CNE 2015-4140, Concepto CNE 2015-4394, Concepto CNE 2015-7546, Concepto CNE 2016-0982, Certificación DANE – 2016, Circular CNE- PGN 2015-017, Circular externa 2014-029 SuperFinanciera y Concepto 2014001896-001 SuperFinanciera.</p>	
18	<p>While the mixed system of public and private campaign funding may seem the most appropriate in the Colombian context, each system, taken individually, has significant flaws. Public resources, through advances and reimbursements, aims to ensure equitable conditions for candidates, but the procedures to access the funding is complex and inefficient. Private funding constitutes a legitimate form of participation in political campaigns, so long as it takes place within a framework of oversight, transparency and accountability. In Colombia, lack of restrictions and effective controls carries several risks, which affect equity, equality of opportunities and the transparency of the elections.</p> <p><i>(pages 23 to 29 EU EEM Final Report, Presidential Elections Colombia)</i> <i>(pages 9, 10 and 11, EU EEM Final Report,</i></p>	<p>→ In the EEM’s view, it would be advisable and opportune to:</p> <p>i) strengthen direct public funding by providing the advance necessary for campaign activities, without incurring a penalty</p> <p>ii) increase indirect public funding by partial State funding of advertising in the media;</p> <p>iii) reduce and limit private funding, particularly in local elections where the influence of clientelist networks is greatest. For example, a limit could be introduced on the absolute value of donations from the candidates’ own resources, private individuals and corporations, bank loans and political parties’ own resources.</p>	<p>YES. Legislative reform.</p>	<p>UN Convention Against Corruption, article 7.3: “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”</p> <p>Venice Commission (VC) Code of Good practice in the Field of Political Parties CDL-AD (2009)021, paragraphs 39, 40, 41, 42, 43 y 44)</p>	<p>Same regulation as in Recommendation nº 17.</p>	<p>Congress CNE <i>General State Comptrollership</i> (Contraloría General del Estado)</p>

Legislative Elections Colombia)						
Media (Recommendations n°19 and 20)						
19	<p>While the campaign for the first round of the presidential election included 37 debates between candidates, as well as over 80 public events, there was no debate during the second round campaign. Considering the existing legal provisions and the Constitutional Court’s interpretation of these, the EU EEM considers that, while no-one can be forced to participate in a debate, nor should another candidate’s right to have a debate be over-ridden by another’s absence. In fact, the pertinent question is whether a mere political calculation should prevail over Colombian citizens’ right to be informed about the candidates’ political and governmental proposals.</p> <p><i>(pages 30 and 31 EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>→ The EU EEM considers that the matter of debates in the second presidential election round merits regulatory clarification, in order to make clear, without any CNE interpretation necessary, what the status of such debates is, taking into account the rights and responsibilities of political campaigns and the superior interest of the Colombian people to be able to cast a well-informed vote.</p>	<p>NO. Possibly a minor clarification of the existing regulations</p>	<p>ICCPR General Comment 34, paragraph 13: “The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.”</p> <p>ICCPR, article 19: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”</p> <p>American Convention on Human Rights (ACHR) article 13.1: Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.”</p> <p>Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression Doc. E/CN.4/1999/64, article 17.1 “...in pre-election periods, and in the interest of ensuring the most fully informed electorate possible, the State must ensure that media are given the widest possible latitude. This can be best achieved when, inter alia: Media inform the public about the political parties, candidates, campaign issues and voting</p>	<p>Law 996/2005: article 23. Constitutional Court ruling C-1153/05, 11 November 2005.</p>	<p>Congress Media</p>

				processes; government media are balanced and impartial in election reporting, do not discriminate against any political party or candidate in granting access to air time and ensure that news, interviews and information programmes are not biased in favour of, or against, any party or candidate.”		
20	<p>Several media outlets dedicated email addresses or social network accounts to citizen reporting for the purposes of fact-checking. Such initiatives are laudable, but insufficient given the dimensions of the problem.</p> <p><i>(pages 13 and 14, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→It would be advisable for the public authorities, particularly the electoral authorities, to carry out educational campaigns, perhaps in collaboration with the Ministry of Technology and Communications, to teach internet users, particularly the youngest, the keys to distinguishing between true and false information, and thus avoid further dissemination of false information and enabling falsehoods to take hold in public opinion.</p>	NO	<p>ICCPR General Comment 34, paragraph 21: “Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (ordre public) or of public health or morals.”</p> <p>ICCPR General Comment 34, paragraph 43: “Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3.”</p>		Government of Colombia State Institutions
Polls (Recommendation n°21)						
21	<p>Polls constitute a fallible tool to measure voting intentions at the time that the poll is carried out, and within a certain margin of error. In Colombia, the use of polls in general and their reliability in particular are questioned by candidates and political parties.</p> <p><i>(pages 41, 42 and 43 EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>→ The publication of a technical datasheet would enable better evaluation of opinion polls’ reliability. The media would therefore be in a position to submit to self-regulation regarding the publication of opinion polls during the campaign, including the obligation to reveal not only the most basic data (sample type and size, dates, margin of error) but also other information such as geographic spread,</p>	NO	<p>ICCPR, article 19: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”</p> <p>ESOMAR Code and Guidelines (European Society for Opinion and</p>	<p>Electoral code: article 28. Law 996/2006: article 28 CNE Circular 001-2018 CNE Clarifying note 001-2018</p>	CNE Media

		rate of response, number of attempts made by interviewers, and whether interviews were supervised. Media organs could sign a code of conduct prior to the campaign, wherein they committed to publishing the full technical information relating to opinion polls.		Marketing Research) and WAPOR (World Association for Public Opinion Research)	CNE Circular 007-2018	
Vulnerable groups (Recommendations n°22, 23 and 24)						
22	<p>Political organisations are legally required to dedicate 15% of their public funding to the active inclusion of women, young people and ethnic minorities. However, the ‘Clear Accounts’ application revealed that during 2017, just 2.5% of State funding was invested in strengthening women’s participation. The 2015 Power Balance Constitutional amendment (Acto Legislativo 02/2015) established that candidacies for elected posts had to respect the principles of parity, alternation and universality, but this principle has not yet been reflected in regulation.</p> <p><i>(pages 20, 21, 22 and 23, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→The authorities should redouble their efforts to ensure women and men participate equally in the electoral process. Parties should be encouraged to adopt further measures to increase women’s participation both in party activities and as candidates.</p>	YES	<p>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) paragraph 4: “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”</p>	<p>Legislative Act 1475/2011: article 28. Legislative Act 02/2015 Law 581/2000, article 4.</p>	Congress

<p>23</p>	<p>Indigenous and Afro-Colombian communities have special constituencies in the Senate and the House of Representatives, in which candidates with the corresponding ethnic origin compete, after they have been approved by the legally-constituted institutions of these communities. Because the voter register does not differentiate between ethnicities and there is no specific ballot for these constituencies, voters choose themselves whether to vote for the special constituencies for indigenous people and Afro-Colombians or for the ordinary House and Senate constituencies. This could affect their representation.</p> <p><i>(page 33 EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 20, 21, 22 and 23, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→It would be advisable to guarantee the rights of indigenous and Afro-Colombian communities to vote for their constituencies. For this purpose, it would be useful to establish a voter register exclusively for the special constituencies, without prejudice to indigenous and Afro-Colombians’ right to vote in ordinary constituencies, in line with international best practice in democratic elections.</p>	<p>YES</p>	<p>ICCPR, article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”</p> <p>International Convention on the Elimination of all Forms of Racial Discrimination, article 5: “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”</p> <p>American Convention on Human Rights (ACHR) article 23 (b) Every citizen shall enjoy the following rights and opportunities b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.”</p> <p>Venice Commission. Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev), paragraph 23: “Certain measures taken to ensure minimum</p>	<p>Constitution: articles 171 y 176. Law 649/2001. Constituciona l Court: Ruling C 169/2001, 14 February 2001.</p>	<p>Congress CNE RNEC</p>
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				<p>representation for minorities either by reserving seats for them or by providing for exceptions to the normal rules on seat distribution, eg by waiving the quorum for the national minorities' parties do not infringe the principle of equality. It may also be foreseen that people belonging to national minorities have the right to vote for both general and national minority lists. However, neither candidates nor electors must be required to indicate their affiliation with any national minority."</p>		
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24	<p>The RNEC included Braille templates so that people with visual disabilities were able to vote without assistance, like other citizens. However, the RNEC did not plan any measures to improve access to voting centres for people with mobility limitations. In this respect, the authorities have not completely implemented the recommendations addressed to Colombia by the United Nations Committee on the Rights of People with Disabilities the aim of which was to ensure that election procedures, layouts and materials are accessible to all voters, both in urban and rural areas.</p> <p><i>(page 34 EU EEM Final Report, Presidential Elections Colombia)</i></p> <p><i>(pages 20, 21, 22 y 23, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→As a signatory to the Convention on the Rights of Persons with Disabilities (CDPD), Colombia should guarantee that voters with disabilities are able to exercise their political rights, not least with regard to the right to a secret vote and access to polling stations. This includes the rights of Colombians with cognitive or mental disabilities who cannot vote following a judicial decision to that effect.</p>	<p>YES. In relation to people with cognitive disabilities.</p>	<p>Convention on the Rights of Persons with Disabilities (CDPD), article 5.3: “In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”</p> <p>CDPD, article 29: “States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:</p> <ul style="list-style-type: none"> (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate. <p>Committee on the Rights of Persons with Disabilities Sixth session. Final Observations to Spain (2011), paragraph 48: The Committee recommends that all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote and participate in public life, on an equal basis with others. The Committee requests the government of</p>	<p>Constitution articles 98 and 99. Law 163/1994. Article 16</p>	<p>Congress CNE RNEC</p>
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				Spain to amend art. 3 of the Organic Law 5/1985 which allows the denial of the right to vote based on individualised decisions taken by the judge. The amendment should ensure that all persons with disabilities have the right to vote."		
Election day (Recommendations n°25, 26 and 27)						
25	<p>In Colombia, voting takes place over the course of eight hours (from eight in the morning until four in the afternoon), which is a very reduced timeframe compared to nearby regional practices and other international practices. In addition, contrary to international standards in this field and good electoral practices, there is no provision to allow people still queuing at closing time to vote.</p> <p><i>(pages 35, 36 and 37 EU EEM Final Report, Presidential Elections Colombia)</i> <i>(pages 25 and 26, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ <i>It would be opportune to extend voting hours and, in line with best practice, to introduce regulation that ensures people already queuing at closing time be able to vote. Both measures would reinforce the effective exercise of right to vote.</i></p>	YES	<p>ICCPR, article 25(b): "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."</p> <p>ICCPR, General Comment 25, paragraph 11: "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right."</p> <p>American Convention on Human Rights (ACHR) article 23 (b) Every citizen shall enjoy the following rights and opportunities b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters."</p>	<p>Constitution: articles 152 part f and 266.</p> <p>Electoral Code: article 111.</p>	<p>Congress CNE RNEC</p>
26	<p>Fraudulent changes of residence and, by corollary, changes of voting centre, are linked to vote-buying. The adscription of voters to relatively small numbers of voting centres makes it easier to monitor voters and make them dependent on others to transport them to voting centres. This can be exploited by those who would buy votes.</p> <p><i>(pages 14, 15 and 16, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→ Political parties should develop new means of attracting support from the electorate, without having to resort to vote-buying. The application of existing sanctions for this practice should be accompanied by information campaigns on the rights to a secret vote, among other rights. .</p>	NO	<p>ICCPR General Comment 25, paragraph 19: "Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of</p>	<p>Law 1864/2017: article 6. Modifies article 390 of Law 599/200 (Penal Code)</p>	<p>CNE RNEC Political parties</p>

				violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”		
27	<p>Due to budget restrictions, the RNEC did not scan and publish the results forms from the internal (primary) party elections.</p> <p><i>(pages 27, 28 and 29, EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→The RNEC should facilitate detailed information on the results of elections, including those that are held within parties when all Colombian citizens can participate in them.</p>	NO	<p>ICCPR General Comment 34, paragraph 19: “States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.”</p> <p>UN Convention Against Corruption, article 10: Each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.”</p>	Electoral Code: articles 155 and 156.	RNEC
Election results (Recommendations n°28 and 29)						
28	<p>There were differences between the RNEC preliminary results and the official results announced by the CNE which, although without any impact on the outcome, nonetheless</p>	<p>→ It would be advisable to systematically verify the procedures in place for the counting and aggregation of preliminary and official results, in</p>	NO, but a review of procedures would be necessary.	<p>ICCPR, article 19: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas</p>	Constitution: articles 264, 265 and 266. Statutory Law	Congress RNEC CNE

	<p>contributed to doubts regarding Colombia's method for counting and aggregating votes.</p> <p><i>(pages 41, 42 and 43 EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>order to dispel the doubts that arise when there are differences between the two sets of results, which in principle should only occur if aggregation commissions (escrutadores) carry out recounts or revisions of results forms.</p>		<p>of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”</p> <p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>Venice Commission. Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev), paragraph 51: “It is important therefore to make it clear to the public that the final result may be quite different from, or even completely opposite to, the provisional one, without there having been any question of foul play.”</p>	<p>1475/2011: articles 41,42 y 43. Electoral Code: articles 58, 155 y 156. RNEC circulars (IT department).</p>	
<p>29</p>	<p>The EU EEM observed a large number of votes which were annulled because voters marked more than one of the three checkboxes for the blank vote on the ballot. This ultimately affected the number of valid votes, since blank votes count as valid and are counted to calculate the threshold for the attribution of seats. Other reasons for annulling votes concerned ballots with several marks and those ballots purposefully spoilt by voters.</p> <p>The blank vote came in at slightly above 5%, while the total of annulled and unmarked votes reached over 10%, in both elections to the Senate and the House of Representatives.</p> <p><i>(pages 30 and 31 EU EEM Final Report, Legislative Elections Colombia)</i></p>	<p>→The RNEC should redesign the ballot for the Senate and House of Representatives in order to avoid the high number of annulled votes caused by errors due to confusing ballot layout.</p>	<p>NO</p>	<p>Venice Commission. Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev), paragraph 31: “The voting procedure must be kept simple.”</p>	<p>Constitution, article 258. Electoral Code. Article 58.</p>	<p>CNE RNEC</p>

Announcement of results and appeals against results (Recommendations n°30,31 and 32)						
30	<p>The institutions responsible for determining election appeals are the CNE and the Fifth Section of the State Council. The aggregation process is an incremental and preclusive administrative process, whereby complaints and petitions are heard at each stage, and the results can be adjusted or corrected in line with said complaints before the aggregation passes to the next level and, finally, to the CNE to declare.</p> <p>However, despite the incremental system, every election process results in the CNE having to receive, manage and resolve numerous complaints at national level. In addition, Colombian legislation does not stipulate a deadline by which the CNE must resolve complaints.</p> <p><i>(pages 37, 38, 39 y 40 EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>→ Given that the incremental system for challenging results already offers sufficient guarantees, the EU EEM considers that lawmakers limit the possible causes for annulment claims before the CNE, and that specific deadlines be established so that the entire legislative and presidential election processes are complete before the duly elected take office.</p>	<p>YES. Constitutional and legislative reform</p>	<p>ICCPR, article 25(b): “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”</p> <p>ICCPR, article 2(3): “ Each State Party to the present Covenant undertakes:</p> <p>(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.”</p> <p>Universal Declaration of Human Rights (UDHR) article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”</p>	<p>Constitution: articles 237, 264 y 265 Electoral Code: articles 187, 192,193. Law 163/1994: article 6. CNE Resolutions n°744/2018 and 1399/2018.</p> <p>State Council Interior Regulation Acuerdo 2/1971, acuerdo 1/1978, acuerdo 58/1999, acuerdo 45/2000, acuerdo 35/2001,</p>	<p>Congress CNE State Council</p>

					acuerdo 19/2002 and 30/2002.	
31	<p>In Colombia, judicial oversight of decisions related to the election process is under the jurisdiction of administrative appeals, headed by the Fifth Section of the State Council. The Council exercises control over the criteria for annulment, acting as an administrative jurisdiction rather than an electoral one, given that CNE declarations of results are, <i>per se</i>, an administrative decision. Although the Constitution provides that the administrative appeals jurisdiction determine challenges to annul results within a year, in practice some cases are resolved in a period of time which is incompatible with the principles of electoral justice. <i>(pages 37, 38, 39 y 40 EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>→ The EU EEM recommends that legislation clearly include the State Council in the architecture of the election process, maintaining its competence in matters of oversight of electoral decisions and events, but imposing deadlines which will allow the election process to conclude before the newly-elected take office, thus ensuring that the electorate's choice is respected.</p>	<p>YES. Constitutional and legislative reform</p>	<p>ICCPR General Comment 25, paragraph 20: "There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes."</p> <p>ICCPR, article 2(3): " Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy."</p> <p>Universal Declaration of Human Rights (UDHR) article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."</p>	The same regulations as in recommendation nº 30.	Congress CNE State Council
32	<p>Another problem in the Colombian electoral context concerns the question of injunction petitions. Injunctions are judicial orders restraining a person or authority from beginning or continuing an action threatening or invading the legal right of another, or compelling a person or authority to carry out a certain act. From a purely analytical perspective, injunction petitions should not be applicable in electoral matters, and should only be used when the petitioner has no other means of having his rights respected, or in order to avoid an irreversible harm, in which case he should provide evidence that demonstrate the need for the intervention of the court. <i>(pages 37, 38, 39 and 40 EU EEM Final Report, Presidential Elections Colombia)</i></p>	<p>→ In order to avoid the capricious use of injunctions in election processes, the EU EEM consider it would be useful to introduce the option of a petition for legal protection of fundamental rights, which would be final.</p>	<p>YES. Constitutional and legislative reform</p>	<p>ICCPR, Human Rights Committee, General Comment 31, paragraph 6: "States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights."</p>	Constitution: articles 23,40 86, 236, 237, 241 and 265 Electoral Code: articles 187, 192,193. Procedural and administrative code and Code for Administrative Disputes: articles 139 and 275. Law 1437/2011:	Congress CNE State Council

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Legend of applicable international and regional instruments and information and technical documents		
A	(ICCPR) International Covenant on Civil and Political Rights (UN Assembly General, 16 December 1966)	
B	Optional Protocol to International Covenant on Civil and Political Rights. UN Assembly General Resolution 2200 A (XXI), 16 December 1966	
C	The International Convention on Elimination of all Forms of Racial Discrimination (CERD); (UN Assembly General, 21 December 1965)	
D	International Covenant on Economic, Social and Cultural Rights, UN Assembly General, 16 December 1966	
E	Optional Protocol to International Covenant on Economic, Social and Cultural Rights, Resolution A/RES/63/117 adopted on 10 December 2008	
F	Convention on the Political Rights of Women; Convention on the Elimination of All Forms of Discrimination against Women. UN Assembly General Resolution 34/180, 18 December 1979	
G	Optional protocol to Convention on the Elimination of All Forms of Discrimination against Women. Adopted by UN Assembly General in Resolution A/54/4 on 6 October 1999	
H	United Nations Convention on Rights of Persons with Disabilities. Adopted in New York, 13 December 2006.	
I	Optional Protocol to Convention on Rights of Persons with Disabilities. Adopted in New York, 13 December 2006.	
J	United Nations Declaration on the Rights of Indigenous Peoples, Resolution approved by Assembly General without reference to a Main Committee (A/61/L.67 and Add.1)	Informative and technical
K	Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993	Informative and technical
L	Report of the Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing 4 - 15 de September 1995, approving Beijing Declaration and Platform for Action	Informative and technical
M	American Convention on Human Rights, (San José Pact). Adopted in San José, Costa Rica, 22 November 1969.	

N	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"	
Ñ	Inter-American Convention on the granting of political Rights to women (OAS, 1948)	
O	Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. OAS, Adopted in Guatemala City 06/07/99.	
P	Inter-American Democratic Charter (OAS, 11 September 2001)	Informative and technical
Q	Universal Declaration of Human Rights. Adopted by RES. N° 217 A (III) 10 December 1948.	
R	American Declaration of the Rights and Duties Man, Adopted during IX American Conference, Bogotá 1948.	
S	The Declaration of Principles for International Election Observation and the Code of Conduct for International Election Commemorated October 27, 2005, at the United Nations, New York.	Informative and technical
T	Indigenous and Tribal Peoples Convention, (ILO c.169). Adopted Geneva, 27 June 1989	Informative and technical
U	European Convention on Human Rights, modified by protocols 11 and 14 and completed by the addition protocol and protocols 4, 6, 7, 12 and 13.	Informative and technical
V	Venice Commission: the European Commission for Democracy through Law - better known as the Venice Commission as it meets in Venice - is the Council of Europe's advisory body on constitutional matters	Informative and technical
W	ESOMAR Code and Guidelines (European Society for Opinion and Marketing Research) and WAPOR (World Association for Public Opinion Research)	Informative and technical
X	Interparliamentary Union, Declaration on the criteria for free and fair elections (1994).	Informative and technical
Y	Inter-American Convention Against Corruption (IACAC)	
Z	United Nations Committee for Human Rights. General Comment N° 25 (1996) on The right to participate in public affairs, voting rights and the right of equal access to public service (ICCPR)	Informative and technical
ZZ	United Nations Convention against Corruption. UN Assembly General Resolution 58/4, 31 October 2003.	

Annex II: Official and preliminary results in the second round of the presidential election

	Preliminary results Second round 17 June 2018		Official results Second round 21 June 2018		Difference between official and preliminary results	
	Votes	%	Votes	%	Votes	%
Iván Duque Martha Lucía Ramírez <i>(Partido Centro Democrático)</i>	10,373,080	53.98%	10,398,689	54.03%	25,609	0.25%
Gustavo Petro Ángela María Robledo <i>(Coalición Petro Presidente)</i>	8,034,189	41.81%	8,040,449	41.77%	6,260	0.08%
Blank votes	808,368	4.21%	807,924	4.20%	-444	-0.05%
VALID VOTES (candidates + blanks)	19,215,637	98.48%	19,247,062	98.52%	31,425	0.16%
Annulled votes	265,857	1.36%	263,373	1.35%	-2,484	-0.94%
Unmarked ballots	29,674	0.15%	25,969	0.13%	-3,705	-14.27%
TOTAL TURN-OUT (Valid votes + annulled + unmarked)	19,511,168	53.85%	19,536,404	53.92%	25,236	0.13%
Votes which changed attribution between the preliminary and official results	38,632					
Voter register	36,227,267*					

* For the purposes of calculations, the RNEC added 556,673 hypothetical voters, such that the total number of registered voters according to the preliminary results announcements the RNEC made during the course of election day was 36,78,940. According to the RNEC, this addition of almost half a million voters was due to the need to add to the voter register of 36,227,267 people, the total number of voters registered in the polling stations abroad (of the total 1500 polling stations), where it was possible to vote from Monday 11 June to Saturday 16 June and who for technical reasons had to be counted individually. The RNEC explains this circumstance on its preliminary results page. <https://qoo.gl/BJ367I>.

Annex III: Official and preliminary results in the first round of the presidential election

	Preliminary results 27 mayo 2018		Official results 8 June 2018		Dif. official and preliminary results	
	Votes	%	Votes	%	Votes	%
Iván Duque Martha Lucía Ramírez <i>(Partido Centro Democrático)</i>	7,569,693	39.14%	7,616,857	39.36%	47,164	0.6%
Gustavo Petro Ángela María Robledo <i>(Coalición Petro Presidente)</i>	4,851,254	25.08%	4,855,069	25.09%	3,815	0.1%
Sergio Fajardo Claudia López <i>(Coalición Colombia)</i>	4,589,696	23.73%	4,602,916	23.78%	13.220	0.3%
Germán Vargas Lleras Juan Carlos Pinzón <i>(Coalición #Mejor Vargas Lleras)</i>	1,407,840	7.28%	1,412,392	7.30%	4.552	0.3%
Humberto de la Calle Clara López <i>(PAR, Alianza Social Independiente ASI)</i>	399,180	2.06%	396,151	2.05%	-3.029	-0.8%
Jorge Antonio Trujillo Freddy Obando <i>(Todos somos Colombia)</i>	75,614	0.39%	65,767	0.34%	-9.847	-13%
Partido de Renovación Étnica (PRE) <i>(Promotores del voto en blanco)</i>	60,312	0.31%	30,128	0.16%	-30.184	-49.9%
Viviane Morales Jorge Leyva <i>(Partido Somos)</i>	41,458	0.21%	36,138	0.19%	-5.320	-12.8%
Blank votes	341,087	1.76%	338,581	1.75%	-2.506	-0.7%
VALID VOTES (candidates + blank votes)	19,336,134	98.46%	19,353,999	98.53%	17.865	0.1%
Annulled votes	243,645	1.24%	242,002	1.23%	-1.643	-0.7%
Unmarked ballots	56,935	0.28%	47,675	0.24%	-9.260	-16.3%
TOTAL TURN-OUT (Valid votes + annulled + unmarked)	196,36,714	54.20%	19,643,676	54.22%	6.962	0.04%
Votes which changed attribution between the preliminary and official results			130,540			
Voter register			36,227,267*			

* For the purposes of calculations, the RNEC added 556,673 hypothetical voters, such that the total number of registered voters according to the preliminary results announcements the RNEC made during the course of election day was 36,78,940. According to the RNEC, this addition of almost half a million voters was due to the need to add to the voter register of 36,227,267 people, the total number of voters registered in the polling stations abroad (of the total 1500 polling stations), where it was possible to vote from Monday 21 June to Saturday 26 May and who for technical reasons had to be counted individually. The RNEC explains this circumstance on its preliminary results page.. <https://goo.gl/BJ367J>.

