



## Preliminary Report of the OAS Electoral Observation Mission in El Salvador

February 6, 2024

The Electoral Observation Mission of the Organization of American States (OAS/EOM), headed by the former Vice President and former Foreign Minister of Panama, Isabel de Saint Malo, congratulates the people of El Salvador on the holding of the presidential and parliamentary elections last Sunday, February 4. The Mission emphasizes that Salvadorans went to the polls on a massive scale and without coercion, both in the national territory and abroad. It also emphasizes that election day took place peacefully and that on election night the Salvadoran people celebrated calmly and without violence. The wide gap between the winning candidate and his opponents leaves no doubt about the election results and coincides with the data collected by the Mission. The OAS/EOM especially highlights the work carried out by the personnel of the voting stations, who in many cases worked for more than 20 hours.

The OAS/EOM comprised 95 observers<sup>1</sup> of 20 different nationalities, who observed the elections in El Salvador's 14 departments. The Mission examined different aspects of the elections, including electoral organization; voting abroad; electoral technology; campaign finance; electoral justice; political participation of women; electoral violence; and campaigns, media, and digital communication. The Mission's specialists also followed up on the recommendations issued by previous OAS Missions.

The Mission was installed in the country in a staggered manner, starting on January 25, 2024, and met with political actors, electoral and government authorities, candidates, and representatives of civil society organizations to learn about the preparations and their views on the elections. Based on the meetings, analysis of regulations and other documents, and direct observation, the Mission was able to carry out a comprehensive analysis of the electoral process.

### BACKGROUND

The elections were held under unprecedented conditions for El Salvador. One of the main reasons is that this is the first election to be held under a state of emergency since the signing of the 1992 Peace Accords. The second reason is that, for the first time since the 1983 National Constitution came into force, a sitting President is running for an immediate second presidential term.

On March 27, 2022, the Legislative Assembly declared a state of emergency throughout the national territory based on articles 29 and 30 of the Constitution, "due to the serious disturbances to public order by criminal groups that threaten the life, peace, and security of the Salvadoran population,"<sup>2</sup> for a period

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<sup>1</sup>48 men and 47 women.

<sup>2</sup>Legislative Decree 333 of March 27, 2022. See:

["https://www.asamblea.gob.sv/sites/default/files/documents/decretos/4214B3CA-A3AA-4435-8229-49C097CAB14D.pdf"](https://www.asamblea.gob.sv/sites/default/files/documents/decretos/4214B3CA-A3AA-4435-8229-49C097CAB14D.pdf)



of 30 days, which is the period established by the Constitution. That fundamental norm also establishes that the period of the suspension of constitutional guarantees may be extended for an equal period and by means of a new decree, if the circumstances that motivated it continue. The original declaration suspended - or made corresponding modifications - to the freedoms and guarantees of association and assembly,<sup>3</sup> defense,<sup>4</sup> length of time of administrative detention,<sup>5</sup> and inviolability of correspondence and interception of communications.<sup>6</sup> Subsequently, in August 2022, the freedoms of association and assembly were restored.<sup>7</sup> The government has continuously extended the emergency regime every 30 days. As of the date of publication of this report, the emergency regime has been in effect for more than 680 days.

Various stakeholders with whom the Mission met expressed their concern about the repeated extension of the emergency regime, which in their opinion undermines its temporary nature. The Salvadoran government, for its part, stated that, despite improvements in the security indexes, especially in the homicide rate, there are still a high number of gang members who must be captured, which in its opinion still justifies maintaining the state of emergency.

Regarding immediate presidential reelection, the Mission received recurrent expressions of concern and disagreement from the various stakeholders with whom it met regarding the interpretation of the Constitutional Chamber of the Supreme Court of Justice that the text of the Constitution allows for immediate presidential reelection on a single occasion.<sup>8</sup>

It should be noted that this decision followed the dismissal of the regular and alternate judges of the Constitutional Chamber - and the Attorney General of the Republic - on May 1, 2021 by the Legislative Assembly,<sup>9</sup> an action that was rejected by the OAS General Secretariat.<sup>10</sup> Likewise, the IACHR condemned the Legislative Assembly's decision, considering that the constitutional norms regulating the procedure and the Inter-American standards for the removal of justice operators had not been complied with.<sup>11</sup> It is also important to highlight that these events took place less than three months after a Special Mission of the OAS General Secretariat visited El Salvador, at the invitation of the government in the framework of

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<sup>3</sup> Political Constitution, Article 7. Available at:

[https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117\\_072857074\\_archivo\\_documento\\_legislativo.pdf](https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_072857074_archivo_documento_legislativo.pdf)

<sup>4</sup> Political Constitution, Article 12, paragraph 2.

<sup>5</sup> Political Constitution, Article 12, paragraph 2.

<sup>6</sup> Political Constitution, Article 24.

<sup>7</sup> Legislative Decree 476 of August 20, 2022. Available at:

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/71811C3C-2A45-46AE-8F76-5B4E03BE1592.pdf>

<sup>8</sup> Constitutional Chamber, resolution 1-2021. See full text in: <https://www.jurisprudencia.gob.sv/portal/apls/2021/09/1-2021PerdidaDerechosCiudadania.pdf>

<sup>9</sup> Political Constitution, Article 186, paragraph 1.

<sup>10</sup> OAS, press release (May 2, 2021). See: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-044/21](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-044/21)

<sup>11</sup> IACHR ( May 3, 2021). See: [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/110.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/110.asp)



Article 17 of the Democratic Charter<sup>12</sup>, and that its report recalled that "Inter-American jurisprudence recognizes that the separation of powers is closely related not only to the consolidation of the democratic regime, but also seeks to preserve the freedoms and human rights of citizens".<sup>13</sup>

The Mission recognizes that the political-legal debate on reelection in El Salvador is not recent. Within the framework of different political and electoral contexts, article 152<sup>14</sup> of the Political Constitution has been interpreted with different scopes, both by the Supreme Electoral Tribunal (TSE) and the Constitutional Chamber. In some cases, even with contradictory interpretations, as happened with the registration and subsequent cancellation of the presidential candidacy of Elías Antonio Saca in 2014.<sup>15</sup> In those elections, the TSE understood that the waiting period for non-immediate presidential reelection was five years, while the Constitutional Chamber interpreted that period to be 10 years.<sup>16</sup> Previous OAS missions have identified and issued recommendations on the overlapping of powers between the TSE and the Constitutional Chamber, which has an impact on the legal certainty and security of the electoral process.<sup>17</sup>

The interpretation made by the Constitutional Chamber in 2014 remained in force as a precedent until September 3, 2021 when, in its new and questionable configuration, the Chamber interpreted constitutional article 152 in the sense that a President in office can be reelected immediately, but only once.<sup>18</sup> In this regard, the Chamber stated that "it shall be understood that there is no sovereign right in cases seeking continuation or reelection beyond the 10 years allowed by Article 152, paragraph 1 of the Constitution. For it is the same constitutional body that allows the President to run again for a second term, there being a prohibition only in the case of a President who seeks a candidacy having already served as President in the immediately prior term; hence, it would be illegitimate to promote the continuity of the President or a reelection beyond ten years, that is, beyond two terms".<sup>19</sup> Under the terms of this ruling, the Chamber also reinterpreted the constitutional articles on insurrection, loss of rights for supporting presidential reelection and alternation.<sup>20</sup> It also ordered the TSE to comply with the resolution.

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<sup>12</sup> Article 17: "When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system." See: [https://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](https://www.oas.org/charter/docs/resolution1_en_p4.htm)

<sup>13</sup> Final Report of the Special Mission of the General Secretariat of the Organization of American States to El Salvador. See: <http://www.oas.org/fpdb/press/Informe-El-Salvador.pdf>

<sup>14</sup> Article 152: "They may not be candidates for President of the Republic: 1. Whoever has served as President of the Republic for more than six months, whether consecutive or not, during the immediately preceding period, or within the last six months prior to the beginning of the presidential term [...]".

<sup>15</sup> Constitutional Chamber, resolution 163-2013. See: <https://www.jurisprudencia.gob.sv/VisorMLX/PDF/163-2013.PDF>

<sup>16</sup> Ibid.

<sup>17</sup> Final Report of the OAS Electoral Observation Mission for the Presidential Elections in the Republic of El Salvador (February 3, 2019). See: [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=D-016/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=D-016/19)

<sup>18</sup> Constitutional Chamber, resolution 1-2021. See: <https://www.jurisprudencia.gob.sv/portal/apls/2021/09/1-2021PerdidaDerechosCiudadania.pdf>

<sup>19</sup> Ibid.

<sup>20</sup> Articles 75, 88, 131, 155, 156, and 248, in addition to the aforementioned article 152.



The Mission noted with concern that between the decision of the Constitutional Chamber and the registration of President Bukele's candidacy by the TSE, on January 18, 2023, the Legislative Assembly amended Article 295 of the Penal Code to add, within the category of electoral fraud, a penalty of 10 to 15 years for those persons who hinder the registration of candidacies that meet the requirements established by law.<sup>21</sup> The OAS/EOM warns that this norm, with regard to the registration of candidates, violates inter-American and universal standards on the independence of judicial and electoral bodies. According to principles recognized by the Inter-American Court of Human Rights (I/A Court H.R.) the judiciary "shall have exclusive authority to decide whether a matter submitted to it is within the competence attributed to it by law" and that "[n]o undue or unwarranted interference with the judicial process shall be made".<sup>22</sup>

On November 3, 2023, the TSE proceeded to register President Nayib Bukele as presidential candidate and Vice President Felix Ulloa as vice presidential candidate with the signature of four of its five members and one abstention. The TSE recognized the Constitutional Chamber as "the highest interpreter of the Constitution", whose interpretations "are binding and, therefore, its resolutions are mandatory".<sup>23</sup> Various stakeholders with whom the Mission met stated that the TSE, as a collegiate body, did not use the legal and constitutional powers at its disposal to conduct a rigorous scrutiny of the interpretation made by the Constitutional Chamber and the consequent registration of President Bukele and Vice President Ulloa. They also commented to the Mission on the TSE's actions in relation to the nullity appeals filed against the registration of the candidacy.<sup>24</sup> They also disagreed with the fact that the collegiate body of the TSE stated that it would abide by the decision of the Constitutional Chamber long before it had to decide on the registration of the candidacies.<sup>25</sup>

The Mission considers that the situation described above violates the constitutional character of the TSE as the supreme electoral authority since, far from being the last word in electoral matters, it is subordinated in its basic electoral decisions, such as the registration of candidacies, to the Constitutional Chamber and to the provisions of criminal laws that limit its freedom to make decisions.

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<sup>21</sup> Criminal Code, Art. 295: A punishment of ten to fifteen years' imprisonment shall be imposed if the electoral fraud is committed under any of the following circumstances: "g) Whoever by any means impedes or obstructs the registration of candidacies when these comply with the requirements established in the laws of the matter, the elaboration of credentials, the electoral registry or the free exercise of suffrage in any of its modalities or interferes in the scrutiny of votes."

<sup>22</sup> I/A Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Inter American Court of Human Rights, Case Law Bulletin (*Cuadernillos de Jurisprudencia*) (2022).

<sup>23</sup> TSE, reference ICPV-N-007-E2024-2029.

<sup>24</sup> See: <https://www.laprensagrafica.com/amp/elsalvador/TSE-deja-en-firme-la-candidatura-de-Bukele-tras-rechazar-recursos-20231122-0040.html>.

See: <https://diario.elmundo.sv/ampArticle/tse-rechaza-los-ultimos-recursos-posibles-contr-la-candidatura-de-bukele-y-queda-firme>

<sup>25</sup> TSE, press release (Sept. 4, 2021), [Platform X]. See:

<https://twitter.com/tseelsalvador/status/1434162513688600578?s=48&t=yavLr766HRHkFhYiOmbag>



Previous OAS Electoral Observation Missions have consistently stated that the use of court rulings to remove constitutional limits to reelection constitutes a bad practice.<sup>26</sup> As the Inter-American Court has stated, “[i]n a representative democracy, the exercise of power must be subject to rules set in advance and of which all citizens are informed beforehand in order to avoid arbitrariness”.<sup>27</sup> It has also stated that the democratic process:

“[R]equires certain rules that limit the power of the majority as expressed at the polls [in order to protect the minorities]. Therefore, those who are temporarily exercising political power cannot be allowed to make changes without limit to the rules on access to the exercise of power. Identifying popular sovereignty with the majority opinion as expressed at the polls is not enough to classify a system as democratic. True democratic systems respect minorities and the institutionalization of the exercise of political power, which is subject to legal limits and a set of controls.”<sup>28</sup>

In sum, President Bukele's immediate reelection was questioned by internal and external voices, and was the result of a politically controversial court ruling. After a series of changes in criteria on the meaning and scope of Article 152 of the Constitution over several years in El Salvador, what prevailed was a limited interpretation of the content of said constitutional provision based on a questionable grammatical understanding. Furthermore, the act of registration of the candidacy of President Bukele and Vice President Ulloa was preceded by the approval of an intimidating legal provision that threatens the judicial independence of the electoral magistrates and criminalizes their actions. Having mentioned all this, the OAS/EOM highlights the fact that the interpretation of the Constitutional Chamber established that the immediate presidential reelection applies only once, expressly setting a limit. This last point is important to note, in order to avoid future interpretations that indefinite reelection could be applied in El Salvador.

The Mission recalls that the Inter-American Court has established that indefinite presidential reelection in presidential systems in the context of the Inter-American human rights system does not constitute an autonomous right protected by the American Convention on Human Rights (ACHR) or by the *corpus iuris* of international human rights law.<sup>29</sup> It has also stated that “Enabling presidential reelection without term limits is contrary to the principles of representative democracy and, therefore, to the obligations established in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man.”<sup>30</sup>

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<sup>26</sup> EOM Final Report of the General Elections of Honduras 2017, <https://www.oas.org/EOMDatabase/GetFileA.aspx?id=396-1103-28-0> Bolivia 2020 National Elections EOM Final Report, available at: <https://www.oas.org/EOMDatabase/GetFileA.aspx?id=427-1248-28-0>

<sup>27</sup> I/A Court H.R. Advisory Opinion No. 28/21 of June 7, 2021. See [https://www.corteidh.or.cr/docs/opiniones/seriea\\_28\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_28_eng.pdf)

<sup>28</sup> Ibid.

<sup>29</sup> Advisory Opinion No. 28/21 of the I/A Court H.R.

<sup>30</sup> Ibid.





Similarly, the Venice Commission, in the report prepared at the request of the OAS General Secretariat, has stated that "the right to be elected is not an absolute right. The limits on reelection that most representative democracies impose on the right of the incumbent President represent a reasonable limit on the right to be elected because they prevent the unlimited exercise of power in the hands of the President and protect other constitutional principles such as checks and balances and the separation of powers."<sup>31</sup> Finally, the report states that "abolishing limits on presidential reelection represents a step backwards in terms of democratic achievement."<sup>32</sup>

## PRE-ELECTORAL PHASE

### *Electoral reforms*

The elections were marked by substantial reforms to the political-electoral system, such as the issuance of the Special Law for the Exercise of Suffrage Abroad.<sup>33</sup> This was accompanied by reforms to reduce the number of seats in the Legislative Assembly from 84 to 60,<sup>34</sup> changes to the formula for the allocation of legislative seats (from the Hare to the D'Hondt method),<sup>35</sup> and a reduction in the number of municipalities from 262 to 44.<sup>36</sup> These last three reforms were approved after the Legislative Assembly reformed the Electoral Code on March 15, 2023 to allow modifications to the rules governing the electoral process one year before the elections, thus repealing the prohibition that previously existed on making such modifications, which goes against the provisions of the Venice Commission in its Code of Good Practice in Electoral Matters.<sup>37</sup>

### *Election campaign*

The Mission observed an atypical and inequitable electoral campaign. Several organizations and actors interviewed coincided in pointing out the absence of equitable conditions for political options to compete fairly. Among other reasons, they mentioned a passive role of the TSE in the face of complaints about

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<sup>31</sup> Venice Commission, Report on term limits Part I-Presidents (2018). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)010-e)

<sup>32</sup> Ibid.

<sup>33</sup> Legislative Decree 541 (October 18, 2022). See:

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/86103987-9557-47D5-9102-EA0D5FC524EA.pdf>

<sup>34</sup> Legislative Decree 755 of June 07, 2023). See:

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/F53234F8-8733-465A-8BA8-38AC721080EA.pdf>

<sup>35</sup> Ibid.

<sup>36</sup> Legislative Decree 762 (June 13, 2023). See:

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/4194112C-1F6E-4E24-808E-9854A3D081AD.pdf>

<sup>37</sup> See: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-spa](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-spa) [For English see also: <https://rm.coe.int/090000168092af01>]



oversight of the use of public resources and government propaganda for campaigning<sup>38</sup>, as well as administrative difficulties in accessing political debt advances. As a result, according to figures from civil society organizations, as of December 2023 the estimated value of electoral propaganda in 2024 was 84% less than in 2019.<sup>39</sup> At the same time, estimates also made by civil society organizations recorded that the political party Nuevas Ideas accounted for 98% of the value of the propaganda issued by the parties between August and December 2023.<sup>40</sup> The OAS/EOM highlights that both the reduced electoral campaign and the high concentration of propaganda in a single political grouping resulted in a lack of robust debates on ideas and proposals among the candidates, which did not facilitate the exercise of an informed citizen vote.

As in previous Observation Missions,<sup>41</sup> on this occasion the consolidation of social networks was identified as providing the main forum for political campaigning in El Salvador.<sup>42</sup> In this regard, the Mission is concerned about data collected by civil society organizations that show an increase in political violence against women on social networks, especially against women candidates<sup>43</sup> and journalists.<sup>44</sup>

The OAS/EOM stresses that conducting electoral processes under states of emergency can hinder their normal organization and functioning. In this regard, the Mission received frequent comments from various political and social actors indicating that this regime results in self-censorship due to possible reprisals by the government, which limits open political participation and the exercise of freedom of the press, as well as reservations about making financial contributions to opposition parties. However, the Mission noted that the freedoms of association and assembly were reestablished in August 2022<sup>45</sup>, before the elections were called on September 6, 2023, and that, in general terms, the above-mentioned actors were able to participate in all stages of the electoral process.

Despite the above, the OAS/EOM notes that the Association of Journalists of El Salvador recorded 64 violations against the press from July 2023 to February 3, 2024, mainly by public officials against digital

<sup>38</sup> See, for example, *Observa El Salvador 2024, Primer informe de observación electoral*, pp. 10 and 11; Available at: [https://drive.google.com/file/d/1nnX931mWa3NgEZCtVV7L71nOPPcc\\_ebQ/view?usp=drivesdk](https://drive.google.com/file/d/1nnX931mWa3NgEZCtVV7L71nOPPcc_ebQ/view?usp=drivesdk)

<sup>39</sup> The amounts were \$1,072,933.71 vs \$6,575,425.55, respectively. *Acción Ciudadana* (2024). See: <https://accion-ciudadana.org/informes/tercerinformedemonitoreoalpropagandaelectoraldelelecciones2024.mesdediciembre2023.accionciudadana2024.pdf>

<sup>40</sup> *Acción Ciudadana* (2024). See: <https://accion-ciudadana.org/informes/tercerinformedemonitoreoalpropagandaelectoraldelelecciones2024.mesdediciembre2023.accionciudadana2024.pdf>

<sup>41</sup> *Final Report OAS/EOM El Salvador 2021*, p. 5. See: <https://www.oas.org/eomdatabase/GetFileA.aspx?id=431-1364-5-0>

<sup>42</sup> *Observa El Salvador 2024, Second report of electoral observation*. Available at: [https://drive.google.com/file/d/12N6JtKv4XCHMB1FopBxmKlIB\\_fjVNCZ/view](https://drive.google.com/file/d/12N6JtKv4XCHMB1FopBxmKlIB_fjVNCZ/view)

<sup>43</sup> *Asociación Nacional de Regidoras, Síndicas, y Alcaldesas Salvadoreñas* (2024). See: [https://andrysas.org.sv/wp-content/uploads/2024/02/Informe\\_Violencia\\_politica.pdf](https://andrysas.org.sv/wp-content/uploads/2024/02/Informe_Violencia_politica.pdf)

<sup>44</sup> *Association of Journalists of El Salvador* (2024). See: <https://apes.org.sv/informe-sobre-violencia-digital-basada-en-genero-dirigida-hacia-mujeres-periodistas/>

<sup>45</sup> *Legislative Decree 476 of August 20, 2022*. Available at: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/71811C3C-2A45-46AE-8F76-5B4E03BE1592.pdf>



media journalists.<sup>46</sup> The Mission warns that public officials have an obligation to be open to criticism, to encourage public debate, to listen to the positions of different sectors, and to fully respect the rights of minorities. Likewise, they have a greater responsibility for the content and scope of their remarks because, if they are violent, they may encourage sympathizers or followers to attack journalists and individuals, both physically and on social networks, when they express opinions contrary to or critical of the government.<sup>47</sup>

In its meetings with different actors, the OAS/EOM also received expressions of concern regarding what they consider to be restrictions to civic space, including repeated investigative audits into civil society organizations, especially if they are critical of the government, as well as a decrease in international cooperation programs.

Finally, based on the OAS definition of electoral violence,<sup>48</sup> the Mission did not receive any complaints from candidates or political organizations about serious attacks or assaults against them during the pre-electoral campaign, and only learned from the Attorney General's Office about a case of threats against a candidate of the Nuevas Ideas party, which was investigated and dealt with. No violence was observed related to the electoral material and its distribution during this stage, which was guarded by members of the National Police. Therefore, the Mission emphasizes that these were the most peaceful and secure elections that the OAS has observed in El Salvador in recent years.

## ELECTION DAY

On Election Day, the Mission visited 1,143 polling stations (JRV) in 387 voting centers located in the 14 departments of the country, as well as in Barcelona, Spain; Guatemala City, Guatemala; Mexico City, Mexico, and Washington D.C., United States, from their installation to the counting, tallying, and transmission of the results.

According to data collected by observers, the JRVs opened on average at 07:30 a.m. According to information shared by the TSE with the Mission, at 09:40 a.m. 99.6% of the JRVs in the country were open and operational.

Most of the centers visited by the Mission had the necessary materials for the vote and adequate spaces for the electoral process. The OAS/EOM also found that 60% of the JRVs observed comprised the five regular members, and highlights the majority participation of women as presidents of the JRVs. Security forces and oversight bodies were observed in 95% of the locations visited by the Mission.

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<sup>46</sup> APES (February 4, 2024). See: <https://apes.org.sv/apes-presento-informe-pre-electoral-de-vulneraciones-a-la-prensa/>

<sup>47</sup> See: I/A Court H.R. Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, par. 143.

<sup>48</sup> The Mission EOM defines electoral violence as any form of intimidation or physical violence directed at stakeholders in the electoral process, the interruption of the electoral process, or damage to electoral materials, which affect the free and transparent conduct of the electoral process and/or influence its results.





The OAS/EOM observed that the elections were calm throughout the country and abroad. In 98% of the voting centers observed by OAS observers, no evidence of threats of violence directed at voters was reported, nor was there evidence of vote buying.

Unlike other electoral processes observed by the OAS in El Salvador, as well as in other countries in the region, on this occasion the OAS/EOM was not authorized to be present at the Unified Command Post (PMU) to monitor incidents on election day. However, during the day a verbal report was given on the incidents that occurred, among which there were no serious cases of violence that could have significantly affected the development of the electoral process.

During its observation of election day, the OAS/EOM observed long lines at the voting centers, as well as large number of voters throughout the day. The Mission acknowledges the calm, patience, and civic commitment with which people waited to exercise their right to vote and highlights the fact that participation in these national and departmental elections attained 55 percent, on average, in the JRV observed by the OAS.

The OAS observers received 42 complaints related to problems and delays in the results transmission system, denial of access to voting centers, proselytizing and electoral propaganda in the vicinity of the polling stations, restrictions on journalists at voting centers, and aggressions against journalists by partisan sympathizers, among others.

The Mission also observed the presence of political party monitors at the polling places during election day. In the JRVs observed by the OAS, observers reported a majority presence of monitors from the Partido Nuevas Ideas (95%), FMLN (47%), ARENA (17%), Fuerza Solidaria (17%), Fraternidad Patriota Salvadoreña (9%) and Nuestro Tiempo party (3%). However, the OAS/EOM also observed that in some cases there was a lack of clarity about the role of the party monitors, who in some JRVs also performed the duties of TSE polling center officials and even JRV members.

## ***Overseas voting***

Salvadorans abroad were able to cast their vote in two ways: electronic voting in person and remote voting through the Internet, according to the address indicated in their I.D. (Documento Único de Identidad (DUI)). Citizens who had a DUI with an address in the national territory or a passport, either current or expired, could vote electronically in person at the voting centers abroad. Also, 739,925 registered citizens residing abroad were able to vote remotely via Internet for a period of 30 days, from midnight on January 6 until 5 p.m. on February 4 (El Salvador time), for both presidential and legislative candidates.

The Mission emphasizes that the implementation of the electronic voting modality expanded and guaranteed the right of Salvadorans to vote. The extended deadline for casting a remote vote and the



ease of doing so from any location is an additional incentive to increase the number of voters. Also, the OAS/EOM witnessed long lines of voters waiting patiently to exercise their vote, on a day that went by smoothly. According to TSE data<sup>49</sup>, 240,339 votes were cast remotely via internet and 86,427 in person. These data point to the highest level of participation by the Salvadoran diaspora in the history of the country.

At the end of the elections, the OAS/EOM observed that in social networks and the media it was reported that some voting centers in the United States<sup>50</sup> where citizens were waiting to vote were closed, despite the fact that the TSE's instructions state that voters who are in line at 5 p.m. will be allowed to vote.

### ***Counting and transmission of results***

At the close of the polls, the OAS/EOM observed a slow start to the counting and tallying processes and difficulties at the tables where its observers were present, due to the late receipt by the polling stations of a second group of resources comprised of the technological kit and transmission equipment. At 5:00 p.m., closing time of Election Day, 48.9% of the observed polling stations had not received the technological kit.

The Mission also observed that in some cases the kits arrived at the JRVs incomplete, without essential materials to start transmission and with technological equipment (computers, scanners, printers, projectors and modems) that did not work. They also reported problems derived from weaknesses in the training of transmission system operators. At 7 p.m., 94.9% of the polling stations observed had not been able to print the tally sheet and its respective copies due to the lack of special chemical paper in 44.7% of cases and because the technological kit had not arrived in 36.8% of cases.

Because the JRV members were unable to proceed with the scrutiny, and had to wait for instructions from the TSE on how to proceed, this stage was extended late into the night. The OAS/EOM observed exhausted JRV members and electoral staff. The Mission recognizes the work of all these people who, in spite of the long day, fulfilled their duty, and calls upon the electoral authorities to take the necessary measures so that in the future long and exhausting canvassing processes do not take place.

Having all the necessary materials for the transmission of the results is a basic and fundamental element of the electoral process that should have been guaranteed by the TSE. In these elections there was a clear setback and failures in the technological component, which showed that the system implemented by the TSE did not work as planned. In the same sense, the OAS also observed flaws/gaps in web page services<sup>51</sup> for the publication of the preliminary results on the night of the election. According to data collected by

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<sup>49</sup> See: <https://preliminar.tse.gob.sv/resultados/dashboard-jrv-8569-1>

<sup>50</sup> See: [https://www.swissinfo.ch/spa/el-salvador-elecciones\\_bukele-denuncia-el-cierre-de-centros-en-el-exterior-cuando-aún-había-votantes-esperando/49186062#:~:text=Without specifying in which C3%A9 pa C3%ADs,they must be allowed to vote](https://www.swissinfo.ch/spa/el-salvador-elecciones_bukele-denuncia-el-cierre-de-centros-en-el-exterior-cuando-aún-había-votantes-esperando/49186062#:~:text=Without specifying in which C3%A9 pa C3%ADs,they must be allowed to vote)".

<sup>51</sup> See: <https://preliminar.tse.gob.sv/resultados/dashboard-index-1>



the OAS/EOM, only 56% of the polling stations observed carried out the vote count in accordance with the established procedures.

The Mission observed a prolonged absence of official information from the TSE after the closing of the voting centers. In the Mission's opinion, this could have been counteracted with the implementation of a strategic communication plan that would have provided first-hand information to both citizens and JRV members and would have helped to provide certainty to the electoral process.

At 10 p.m. the first results of the presidential elections were published on the web page with 13% of the tallies counted. At 10:30 p.m., five and a half hours after the closing of the JRVs, the TSE held a press conference in which it reported a preliminary 21% progress in tallying the preliminary results. As of 00:00h on February 5, only 31.49% of the presidential election tally sheets had been processed and released by the TSE. At approximately 1:40 a.m. on February 5, the Mission was informed of the TSE's decision<sup>52</sup>, communicated to the Attorney General's Office, to approve the manual preparation of tally sheets for the preliminary scrutiny and to take photographs of these documents.

The day after the elections, the Mission found that the last update to the preliminary results publication system was made at 5:34 a.m. for both elections and that the number of processed tally sheets rose to 6,015 out of a total of 8,562, which is equivalent to a processing of 70.25% of the tally sheets for the presidential elections.

In parallel, at 6:30 p.m., through the media, a polling company held a press conference<sup>53</sup> in which it delivered exit poll results. The dissemination of this poll became virtually the only information available to the public on election night. As OAS Observation Missions have said in other countries, the timely and transparent presentation of results by the electoral authority is a fundamental obligation of the authorities, since these are the only official and binding results.

Notwithstanding the silence of the TSE, around 8:00 p.m. the presidential candidate of Nuevas Ideas announced with his own data that he had won the election, and held a public celebration event that was attended by thousands of people in the capital. Even without knowing the official data from the TSE, governments of the region congratulated the reelected president, which highlights the imperative need to strengthen electoral institutionalidad in El Salvador.

While awaiting the tallying and finalization of the vote count and presentation of preliminary results by the TSE, the Mission informs that the data collected by its work team confirms the wide difference between the winning candidate and other candidates in the race, which leaves no doubt about the electoral results of the presidential elections.

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<sup>52</sup> See official TSE X account: <https://x.com/TSEElSalvador/status/1754417590955389221?s=20>

<sup>53</sup> See: [https://www.facebook.com/100068828095989/videos/1563790117720801?locale=es\\_LA](https://www.facebook.com/100068828095989/videos/1563790117720801?locale=es_LA)



Regarding the results of the Legislative Assembly elections, the Mission observed that the day after the elections, the last update to the preliminary results presentation system was made at 5:34 a.m. and that only 5% of the tally sheets had been processed for the election of assembly members. On the same day, through press conferences, political parties<sup>54</sup> noted the delay in processing the data and the lack of election results.

## **FINDINGS AND RECOMMENDATIONS**

The Mission met with political actors, electoral and government authorities, candidates, and representatives of civil society organizations to learn about preparations and their perspectives with respect to the elections, in addition to gathering information through on-site observation. However, on this occasion the OAS/EOM was unable to meet with the Constitutional Chamber of the Supreme Court of Justice. Despite repeated requests, even in writing, for a meeting this was not granted.

In the interest of supporting the strengthening of Salvadoran democracy, based on a detailed analysis of the legislation in force; the data collected by its specialists and observers; and the information received from various institutional, political, and social actors, the Mission presents, throughout this report, its findings and preliminary recommendations in the following substantive areas observed during this process: electoral organization; voting abroad; electoral technology; political-electoral financing; electoral justice; women's political participation; electoral violence; and campaigns, media and digital communication.

### **I. Organizational aspects of the elections**

#### ***Training and accreditation of polling station members***

The OAS/EOM learned that most political parties had difficulty nominating enough members to meet the requirements for the JRVs they were entitled to in accordance with the legislation.<sup>55</sup> As a result, the TSE proceeded to carry out a lottery among citizens to fill these vacancies. The OAS/EOM was informed that of the total number of JRV members (regular and alternates) summoned by the electoral authority, 59.9% belonged to political parties and 40.1% to citizens who were drawn by lot. The Mission considers that the JRVs should be composed of citizens without party affiliation and without being proposed by political parties.

According to the TSE, 76,000 JRV members (91.84%) received face-to-face training.<sup>56</sup> In addition, a digital training module was developed with six virtual courses. However, the Mission's observers received

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<sup>54</sup> See: <https://www.facebook.com/FMLNoficial/posts/933554851467073> y <https://www.facebook.com/ARENAOFICIAL/videos/709640204637526/>

<sup>55</sup> Electoral Code, Article 99. Available at: [https://info2024.tse.gob.sv/laip\\_tse/documentos/leyes/codigo-electoral/Codigo-Electoral-30-04-2021.pdf](https://info2024.tse.gob.sv/laip_tse/documentos/leyes/codigo-electoral/Codigo-Electoral-30-04-2021.pdf)

<sup>56</sup> National JRV training attendance report, as of February 1, 2024.

complaints from some stakeholders who were unable to access the virtual classroom due to verification problems. The Mission highlights the existence of these training modules, in response to recommendations made by previous OAS Observation Missions. In this regard, it recommends:

- Reviewing the virtual classroom user authentication and verification system, so that all stakeholders can access the virtual classroom.

Despite the advances in training, the OAS/EOM observed that on election day some JRV members did not know how to operate the electronic kit during the vote-count and others did not know exactly what functions they were supposed to perform. This also resulted in the roles of JRV members sometimes being confused with those of party monitors. In view of the upcoming municipal and PARLACEN elections, the Mission recommends:

- Strengthening the training of electronic kit operators, using the equipment they will use on election day.
- Clarifying in training, instructions, and communications the different roles performed by people in the voting centers.
- That those in charge of the voting centers of the TSE make sure that there are no persons exercising roles that do not correspond to them and that they enforce the provisions established in the instructions.

The Mission also observed that the delivery of credentials was late and that several JRV members did not know what their job was until the day of the election, leading to complaints to the Mission by several political parties. The problem with credentials also arose with other actors, such as voting center delegates and party monitors. This is a recurring problem in El Salvador that previous OAS Observation Missions have noted.<sup>57</sup> For this reason, the OAS/EOM reiterates the recommendations regarding:

- Establishing a procedure for accreditation and delivery of credentials in an agile, orderly, and predictable manner, with the objective of generating certainty for the actors in the process and guaranteeing maximum participation.

### ***Election materials and technological equipment***

The Mission observed the deployment of the electoral material and noted that members of the National Civil Police (PNC) accompanied its distribution and guarded the collection centers. However, it noted that the packages were sealed with ordinary packing tape and did not have unique sealing mechanisms such as padlocks or adhesives (which they did have in 2021). The verification of the packages was manual and was recorded by means of delivery and reception minutes.

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<sup>57</sup>Preliminary Report of the OAS Electoral Observation Mission in El Salvador (March 3, 2021). See: [MOE-El-Salvador-2021-Preliminary-EP-Report.pdf \(oas.org\)](https://www.oas.org/en/ep/preliminary-report-2021-el-salvador)



It was also observed that the electoral material is transported in cardboard boxes, which could put it at risk in case it rains and the boxes get wet.

In order to ensure the security of the electoral material, the Mission recommends:

- Having bands or other security mechanisms for the electoral packages with special characteristics such as screening, codes, or logos that confirm the integrity of the material.
- Using mechanisms for the traceability of electoral materials at all stages of the electoral process.
- Using plastic boxes to transport and distribute election materials to prevent them from getting wet in case of rain.

In addition to the electoral packages, the JRVs were to receive two boxes, one brown and one blue, which separately contained materials related to the technological kit and the transmission equipment. The Mission was informed that there were delays in the composition of the brown boxes due to the lack of the necessary elements, which impacted the process, affecting the dispatch of the kits to the different logistics centers for distribution. Similarly, the composition of the blue boxes was delayed. The Mission observed that the preparation and cloning of the electoral kits began very close to the date of the elections, which caused the distribution process to be completed only at 7:00 a.m. on election day.

Due to the late arrival of the boxes at the voting centers, even after the end of the voting day in approximately one third of the JRVs observed, the Mission also found that the rushed work to meet deadlines affected quality controls. This was reflected in the delivery of incomplete kits and the lack of essential materials to start transmission, including special papers for printing the minutes. With a view to future electoral processes, including the elections to be held in March, the Mission recommends:

- Ensuring adequate preparation and distribution of materials and equipment in advance to avoid delays and minimize technical failures on election day.
- Taking the necessary steps to ensure that quality controls can be carried out in a timely manner.
- Adding contingency paper minutes to the electoral material so that in the event of a technological failure, the results can be tallied.

### ***Monitoring on election day***

The OAS/EOM also noted that the TSE developed a digital application to monitor the stages of Election Day, but that it was not used by the majority of those in charge at the voting centers. As of 10:30 a.m., only 33% of the voting centers (530) had reported on the monitoring platform. For future electoral processes, the Mission recommends:

- Training those in charge of the centers that have access to the application to monitor Election Day and provide real-time reports on the JRVs installed, the presence of electoral actors, and eventual incidents.



## II. Overseas voting

The vote for Salvadorans abroad has been in force since 2009 and was previously applied in three general elections (2009, 2014 and 2019) under a single modality, which was postal, and only for the presidential election. On October 19, 2022, the Legislative Assembly approved the Special Law for the Exercise of Suffrage Abroad<sup>58</sup> which aims to guarantee the exercise of the right to vote of Salvadorans abroad for electoral events in the country as of 2024. The two ways used to vote extraterritorially are: remote voting via Internet and electronic voting in person.

According to preliminary figures from the TSE, a total of 326,766 votes were registered: 240,339 for president via Internet voting and 86,427 face-to-face. The Mission highlights the high electoral participation abroad, which exceeds by 8,500% the number of votes cast in 2019 (3,808) and welcomes it, given that previous OAS EOMs had recommended taking actions to guarantee a greater number of Salvadorans the exercise of their fundamental rights.<sup>59</sup>

A voter registry was created only for the remote online voting modality.<sup>60</sup> A total of 739,925 registered citizens residing abroad were eligible to vote remotely from 0:00h on January 6 until 5 p.m. on February 4 (El Salvador time). The Mission was informed that for the in-person voting in the voting centers abroad the electoral registry was the same as in the national territory, since citizens with I.D. with domicile in the country were able to vote in this modality.

The OAS/EOM received information that those who were registered to vote online were not able to do so in person, as their identification number did not appear in the electoral registry to vote in person. Also regarding remote voting, the Mission received complaints that the parties' technical experts could not exercise political oversight.

With regard to voting abroad, 81 voting centers were set up in 68 cities in 29 countries around the world (42 in consulates and the rest in external locations). In this way, Salvadorans with an I.D. with national domicile and passport issued after 2006 were able to vote. The electoral registry was the same as the one used in the national territory. In this modality, voting was only possible on February 4 from 7:00 a.m. to 5:00 p.m. in each country. The Mission was informed that all 81 polling stations were open on election day.

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<sup>58</sup> Legislative Decree 541 approved on October 18, 2022 by the Legislative Assembly of El Salvador, repealing the previous law of 2013, which established postal voting as the only modality.

<sup>59</sup> Reports of OAS Electoral Observation Missions in El Salvador in 2014 and 2019. See: [https://www.oas.org/es/sap/deco/moe\\_informe/Informe\\_%20MOE\\_El%20Salvador2014\\_e.pdf](https://www.oas.org/es/sap/deco/moe_informe/Informe_%20MOE_El%20Salvador2014_e.pdf) y <https://www.oas.org/EOMDatabase/GetFileA.aspx?id=412-1167-28-0>

<sup>60</sup> Citizens were able to register in the Electoral Registry for Electronic Voting (REVEL), to vote remotely until November 5, 2023. See: <https://www.asamblea.gob.sv/node/12908>



Prior to Election Day, the OAS/EOM received expressions of concern from various stakeholders about the type of monitoring that political parties could carry out in polling stations abroad (JRVEX). According to information provided by the TSE, since the vote count would be electronic, the parties could observe but not exercise political oversight functions as they could in the face-to-face vote in the national territory. This determination was made despite the fact that the Special Law for the Exercise of Voting Abroad establishes that said law "has a special character and the provisions of the Electoral Code and the Law of Political Parties shall be applied on a supplementary basis."<sup>61</sup> As with remote voting, the Mission received complaints regarding the fact that the technical experts of the political groups could exercise political oversight over this voting method.

Regarding the allocation of seats from the overseas votes, the OAS/EOM received repeated expressions of concern about the fact that votes received remotely via the Internet were assigned to San Salvador.

The OAS/EOM also observed that the company contracted to carry out the remote voting via Internet and in-person voting abroad played a preponderant role in the organization of both. In this sense, several political actors expressed their annoyance at the passive role played by the TSE in the organization and supervision of both voting modalities.

At the end of the elections, it was reported that some polling places in the United States were closed<sup>62</sup> where citizens in line were unable to vote.

For future elections, the OAS/EOM makes the following recommendations to the TSE:

- Issuing the necessary instructions to guarantee electoral monitoring in the JRVEX, as established in the Electoral Code.
- Issuing the necessary instructions so that the computer experts of the different political groups may also carry out political monitoring, in accordance with the provisions of the Political Constitution and the Electoral Code.
- Conducting the respective technical studies on the possible impact that the allocation of seats to the San Salvador constituency may have on remote voting via Internet, and if applicable, propose corrective measures for future processes.
- Significantly increasing its technical and financial capacity to organize and supervise voting abroad, so that it can fully exercise its obligations and powers over both voting modalities.

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<sup>61</sup> Decree 541, Article 25. Available at: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/1794E65B-265A-45C5-91B7-62B7EAF6C460.pdf>

<sup>62</sup> See: [https://www.swissinfo.ch/spa/el-salvador-elecciones\\_bukele-denuncia-el-cierre-de-centros-en-el-exterior-cuando-a%C3%BAn-hab%C3%ADA-votantes-esperando/49186062#:~:text=Sin%20precisar%20en%20qu%C3%A9%20pa%C3%ADs,se%20les%20debe%20permitir%20votar%22.](https://www.swissinfo.ch/spa/el-salvador-elecciones_bukele-denuncia-el-cierre-de-centros-en-el-exterior-cuando-a%C3%BAn-hab%C3%ADA-votantes-esperando/49186062#:~:text=Sin%20precisar%20en%20qu%C3%A9%20pa%C3%ADs,se%20les%20debe%20permitir%20votar%22.)

### III. Electoral technology

#### *Technology and voting abroad*

Although the implementation of the computer systems allowed for broad registration and voting by citizens, and the platform remained stable during voting, the Mission observed problems in discerning the total number of deputies' seats as a result of votes cast remotely via the Internet, which in turn delayed the publication of the results of the vote abroad in both modalities. In this regard, the OAS/EOM was informed of the existence of some illegible records that temporarily prevented clarification of the total number of votes, which in no way implies, in the opinion of the Mission, the invalidity of the votes of hundreds of thousands of voters who cast their ballots. Determining the total number of votes was suspended until 2:05 a.m. and the company claimed that this was due to a software failure.

On electronic voting, the Mission recommends:

- Conducting an external computer forensic audit by a company that is not a stakeholder in the process to identify exactly what went wrong so that this does not happen again.
- Reinforcing software testing and other review and validation techniques based on best practices in the field.
- Planning an audit that contemplates all software artifacts and strengthening the TSE's control over the entire process. Timely detection of software defects,<sup>63</sup> design problems, and/or implementation deficiencies is vital.

Although the problems with absentee voting could have been partially due to failures on the part of the company hired by the TSE, or could have been avoided through more robust tests that could have drawn attention to possible failures, the truth is that the TSE, as the constitutional body in charge of guaranteeing the effective conduct of the elections, bears ultimate responsibility vis-à-vis the political actors and the citizenry regarding the incidents recorded.

#### *Transmission of results*

El Salvador's elections have progressively included more technological elements, notably since the last presidential elections in 2019 and more significantly in the Legislative, Central American Parliament, and Municipal Council elections of 2021 and in this electoral process. As highlighted by the OAS/EOM in 2021, although technology proved to be a valuable tool to facilitate the process of the unique and complex system of preferential, split, and cross-cutting voting, in addition to reducing inconsistencies in the tally

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<sup>63</sup> A defect, also known as a "bug", is an imperfection or problem in the code or design of the software that causes it not to function as expected. It can arise during any phase of the software development cycle.



sheets for the final tally,<sup>64</sup> its application was not free of errors, some of which were present again in these elections.

The implementation of technology in this electoral process was not successful and it is essential that the electoral authority takes responsibility for reviewing its processes, not only to correct logistical and operational problems, but also to address future problems. Failures such as delays in the distribution of technology kits, lack of materials to print the tally sheets, and lack of electricity and Internet connectivity are all foreseeable and could have been avoided with better institutional planning and contingency measures.

According to the events described in the section on Election Day, the data collected by the OAS/EOM indicate that only 56% of the polling stations observed were able to complete the counting process and the transmission of results in accordance with the established procedures. This forced the TSE to take extraordinary measures during the early hours of February 5 so that the tally sheets could be filled out by hand, since only 31.49% of the tally sheets for the presidential election had been processed. Even with the adoption of this measure, the processing of presidential tallies remained stagnant until Monday morning, when it rose to 70.25%, and then stagnated again. This problem is even more serious for the deputies' tallies, only 5% of which had been processed on the morning of February 5.

The OAS/EOM also identified that the TSE does not have threat modeling, which is the first line of defense to secure the systems and technological environment, providing stakeholders in the process with relevant clarity on their risks and offering specific ways in which to mitigate those risks.

Likewise, although the TSE worked on the Internet exposure surface, the Mission was able to verify that there is an obsolete and insecure version of the virtual classroom that remains online, published in a non-institutional domain. An asset attacked during Election Day could affect the reputation of the electoral body and undermine confidence in the process.

Finally, it was observed that there were interruptions and delays in the publication of results to the public on the TSE's web page.

For future elections, the OAS/EOM recommends:

- Performing threat modeling according to a standard modeling method.
- Performing comprehensive load and stress tests on the process to verify that they are robust enough for election day.
- Planning an audit covering all software artifacts, and strengthening the TSE's control over the entire process.

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<sup>64</sup> Final Report OAS/EOM El Salvador 2021.



## IV. Political and campaign finance

### *Access to public financing*

Within El Salvador's political financing system, public resources are distributed through the so-called political debt, with the objective of promoting the freedom and independence of the parties.<sup>65</sup> The amount to which each party is entitled is calculated by assigning a value to each valid vote and multiplying it by the number of valid votes obtained. Parties may access the debt once the electoral process has occurred<sup>66</sup> or request the corresponding advance of up to 70% of the total value of the resources, which is calculated by means of a projection based on the votes obtained in the previous election of the same type in which they participated.<sup>67</sup>

However, the Mission noted that the process of requesting political debt advances is much more complex than what is stipulated in the law. On the one hand, it is not clear in the regulations whether the TSE or the Ministry of Finance is the institution in charge of communicating the value of the vote to estimate the total amount to which each party would be entitled, which in practice delays decision-making. In addition, the application form for the advance payment prepared by the Ministry of Finance - and delivered at the request of the parties - contains additional requirements that are not explicit in the law. Political groups must also obtain from financial institutions a guarantee policy (*póliza de respaldo*) for these resources, which is subject to market values, since there is no established percentage to fix the amount of the guarantee on the advance payment.<sup>68</sup>

According to information received by the Mission in meetings with various political forces, although they took steps to access political debt as a way to finance their campaigns,<sup>69</sup> in these elections the process was much slower and more complex. According to information provided by the TSE, the six political parties that competed in the presidential election requested certificates of the votes obtained in the previous presidential and legislative elections. However, according to information shared with the OAS/EOM, as of February 2, only three of the six parties had initiated any process to request these resources, and only one completed the process and accessed the advance.<sup>70</sup> These difficulties in accessing political debt were

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<sup>65</sup> Political Constitution, Article 210.

<sup>66</sup> Articles 54 and 55 of the Political Parties Law provide that in order to request the debt it will be sufficient for the interested parties to attach to the corresponding receipt a certification of the results of the elections issued by the TSE, stating the total number of valid votes obtained by each of the contending political parties. The advance to which the contending parties or coalitions are entitled, as well as the amount to be paid for the votes, shall be determined on the date of the call for elections.

<sup>67</sup> Political Parties Act, Article 55.

<sup>68</sup> Article 57 of the Political Parties Law establishes that the advance payment of the debt must be guaranteed by means of a sufficient surety, without detailing its percentage.

<sup>69</sup> See Acción Ciudadana's report on the follow-up of the request for public debt of political parties. <https://accion-ciudadana.org/financiamiento-de-los-partidos-politicos/>

<sup>70</sup> The Arena Party requested that the value of the vote be indicated, while the PCN requested an advance payment and the value of the vote, but had not posted the bond that must support the delivery of these resources. The FMLN requested an advance and was disbursed US\$800 thousand.

also recorded by civil society organizations<sup>71</sup> and the media.<sup>72</sup> They also mentioned other difficulties such as the delay in accessing the necessary information and, in the case of the advance payment, the expectation of not achieving sufficient votes. This would oblige them to return the difference between the advance received and the amount corresponding to the post-election settlement<sup>73</sup> or, failing that, to pay the bond requested from the banks.

The OAS/EOM found that all of these factors together created conditions of inequity in the electoral contest. It also noted that there is no disclosure on the value of the vote and the steps taken by the political organizations and the State authorities in the advance payment requests. There is also no information available on the audits of the parties' reports. Considering that during the month of February the political parties could still request advances of the political debt for the municipal and Parlacen elections to be held in March, it is recommended:

- That the TSE issue a regulation that clearly establishes the procedure and requirements for requesting advances on the public debt, in line with the simplified procedure set forth in the Political Constitution, along with responsibilities of the various State bodies in this matter.
- That all parties comply with all active and passive transparency obligations, publishing on the website relevant information such as the value of the vote established for each election, the certificates of votes obtained, and the audits of the parties' reports.

### ***Campaign finance monitoring and control***

Campaign finance monitoring and control responsibilities are shared between the obligations of the political party;<sup>74</sup> the TSE, which is charged with monitoring public and private resources<sup>75</sup>; and the Court of Accounts,<sup>76</sup> which oversees the management of political debt. In addition, the Ministry of Finance, which provides the public resources, must also have at its disposal the information related to the public and private financing of the parties in detail, and the Prosecutor's Office<sup>77</sup> prosecutes crimes associated

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<sup>71</sup> See reports submitted by the Observa El Salvador 2024 consortium: <https://www.observaelsalvador2024.org/>. And the periodic reports by Acción Ciudadana: <https://accion-ciudadana.org/centro-de-monitoreo-politico/>

<sup>72</sup> For example: <https://diario.elmundo.sv/politica/fmln-solicita-anticipo-de-deuda-politica-2024-arena-tramita-fianza-para-pedirlo>

<sup>73</sup> As provided in the Political Parties Law, Article 58.

<sup>74</sup> Political Parties Act, Article 26C: "Political parties shall be obliged to make available to the Court of Accounts, the information related to their public financing, and to the TSE and the Ministry of Finance the information related to their public and private financing in detail, without the need for the consent of the donors at the end of each fiscal year. Likewise, it shall be made available to the authority that requests it in the course of a judicial investigation at any time it is required."

<sup>75</sup> Electoral Code, Article 63, n, o, p.

<sup>76</sup> Decree No. 438, Article 5 (1): "The Court shall have the powers and functions set forth in Article 195 of the Constitution and, based on the ninth provision of the same Article, the following: 1) To perform external financial and operational or management audits of the entities and agencies that manage State resources." See: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/8541F258-0E91-4753-BE48-89AB098E5981.pdf>

<sup>77</sup> Political Parties Act, Article 74.

with non-compliance with the legal provisions on financing. In this context, the Mission observed that there are no clear mechanisms for inter-agency cooperation among these various actors, nor an articulated plan for better monitoring and control processes.

The Mission also observed the absence of updated information on political financing control by the TSE, such as audits of party reports. It also does not have manuals that explain in greater detail the processes of financing and accountability, nor unified formats for reporting income and expenses. This generates uncertainty in the procedures and increases the opacity of campaign financing.

In addition to this, any monitoring exercise is left pending until the moment when the parties submit their annual income and expenditure reports to the TSE, once their fiscal years are over.<sup>78</sup> In practice, this prevents government agencies from being able to act in a preventive and timely manner in the face of the potential use of illegal resources. Furthermore, the Mission found that the regulations do not set spending limits for campaigns,<sup>79</sup> nor do they establish obligations to account for the income and expenses of candidates with respect to private resources.

With a view to advancing towards mechanisms that allow for greater transparency and control of campaign financing, the OAS/EOM recommends:

- Developing guidance materials and unified formats for accounting for resources from public and private financing.
- Developing mechanisms for coordination and regular exchange of information among the various institutions in charge of campaign finance control and oversight.
- Strengthening the TSE's political financing oversight capacities, providing it with greater human and financial resources, in order to promote the monitoring and control of electoral financing for the timely detection of irregularities, as recommended by the EOMs in 2019 and 2021.<sup>80</sup>

## **V. Electoral justice**

The findings and recommendations contained in this report show deficiencies and bad practices that affected aspects of fairness and transparency of the elections, especially in their sanctioning capacity, both in overseas voting and in the national territory, and that diminished the confidence of some political and social actors in the electoral process.

In the course of its observation, the OAS/EOM received numerous expressions of concern about the deficient actions of the TSE, both in its administrative and jurisdictional functions, which impede the kind

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<sup>78</sup> Political Parties Act, Article 26C.

<sup>79</sup> This recommendation was made by the OAS Electoral Observation Mission for the 2021 elections.

<sup>80</sup> See El Salvador OAS/EOM Reports 2019 and 2021.



of prompt, compliant, and public electoral justice that guarantees conditions of legal certainty and security.

Regarding the control of political propaganda carried out by the ruling party in an untimely manner<sup>81</sup> or with the use of public resources for proselytizing purposes,<sup>82</sup> the Mission received criticism from multiple interlocutors regarding the passive role played by the TSE. Likewise, the OAS/EOM was informed of 31 proceedings initiated because of advance propaganda, none of which were resolved before the elections. According to available information, the TSE ordered the removal of the propaganda through precautionary measures in 18 of these cases.<sup>83</sup>

On the other hand, with respect to the sequence of charges established in the Electoral Code, there were shortcomings with respect to various kinds of appeals, especially regarding acceptable means of proof. In this regard, the 2018, 2019 and 2021 OAS/EOMs have already made recommendations in this regard, requesting a more detailed definition of the rules applicable to the means of challenge established in the electoral legislation and the need to develop an electoral procedural law that contemplates this aspect of the matter.

Finally, another matter that was also the subject of recommendations in previous OAS Missions, and which is related to the guarantees of legal security and certainty, is the absence in the TSE of a system for the publication of its minutes, resolutions, and rulings. The jurisdictional information on the TSE's website is outdated and no public record was identified of the cases received by the entity and the status of each case.

In light of these findings, the Mission reiterates the recommendations made in past OAS/EOMs:

- Strengthening the jurisdictional area of the TSE with more personnel with the necessary specialization in electoral justice, or if necessary, training them.
- Describing in greater detail the rules applicable to filing challenges in the electoral legislation, ideally through the approval of an electoral procedural law that contemplates that issue.
- Modifying the deadlines for imposing sanctions, so that the procedure is brief and is definitively resolved during the electoral process.
- Making electoral jurisprudence available to citizens, systematizing the areas it deals with in such a way as to make it fully and easily accessible.
- Publishing agendas and resolutions, and making any other information related to the functioning of the TSE available to citizens.

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<sup>81</sup> See: <https://vozpublica.net/2024/01/15/campana-elecciones-factchecking-bukele-2024/>

<sup>82</sup> See, for example: <https://www.elsalvador.com/noticias/nacional/gobierno-gasto-en-publicidad-571456-noviembre-segun-informe/1110699/2023/>

<sup>83</sup> Official X account of TSE EL SALVADOR (@TSEElSalvador). January 30, 2024 See: <https://twitter.com/tseelsalvador/status/1752396052232126941?s=46&t=8pZyFTDuOdcZEOo95QQ2qA>

## **VI. Women's political participation**

### ***Conditions for access and participation***

In 2013, a 30% gender quota was introduced in the Salvadoran legal system for the composition of slates for deputies to the Legislative Assembly, Central American Parliament, and members of the Municipal Councils.<sup>84</sup> The sanction for non-compliance is to deny recognition of the official status of the lists presented by the political parties. However, this affirmative action is limited for three main reasons: there is no position mandate, it applies to the list of regular and substitute candidates,<sup>85</sup> and the electoral system contemplates open and unblocked lists.<sup>86</sup>

In addition to the above, the recent reforms<sup>87</sup> that reduced the number of legislative seats from 84 to 60 could also affect the number of women elected, since the fewer seats per constituency, the lower the chances for women to be elected.

Compared to the previous legislative elections, the Mission observed that the number of female candidates for the Legislative Assembly increased by four percentage points, from 35.5% to 39%. However, due to the fact that at the time of preparation of this report the total official preliminary results for legislative seats were not available because of the delays in the scrutiny noted in this report, it was not possible to determine the impact of the electoral reforms on women's political participation in the Legislative Assembly. The Mission will present its analysis in this regard in its report on the March 2024 municipal and Parlacen elections.

Based on the foregoing, the Mission recommends:

- Carrying out the pertinent reforms to move promptly towards vertical and horizontal parity, applicable to the lists of regular candidacies and establishing a position mandate.

### ***Financing for women's political participation***

In addition to the existing barriers to access candidacies, there is no public financing reserved for the promotion of women's political participation and their campaigns, so women candidates must finance their campaigns with their own resources. In this regard, it is recommended:

- Establishing in the legislation a specific percentage of public financing earmarked for women's political training and education, as well as to support their electoral campaigns.

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<sup>84</sup> Political Parties Act.

<sup>85</sup> Political Parties Act, Article 38.

<sup>86</sup> Electoral Code, Article 185.

<sup>87</sup> Electoral Code, Articles 10, 13, and 217.





## ***Political violence against women***

As pointed out to the Mission by electoral authorities, social organizations, international agencies and, especially, women candidates from various parties, political violence against women is another of the main barriers to women's access to and permanence in politics. According to the information gathered, this is a systematic phenomenon, which is on the rise, and which is especially evident in social networks.

During the period of internal elections of political parties and the current electoral campaign, civil society organizations registered a total of 39,473 attacks against women candidates and women in the political arena. The main types of violence identified were psychological, emotional, symbolic, and sexual violence. Violence against women is especially prevalent in the digital sphere, particularly on social networks such as Facebook and Twitter. According to the same report, at least 31 female candidates were attacked mainly by anonymous accounts and 5,366 accounts were identified as disseminating hate messages and disqualifications.<sup>88</sup>

The Mission highlights as an important step forward that in 2021 political violence will be incorporated as one of the modalities of violence against women in the Special Comprehensive Law for a Life Free of Violence for Women (LEIV).<sup>89</sup> It also recognizes the development by the TSE of a "Protocol for the Prevention and Attention of Women Victims of Political Violence". Although the protocol is in force, the articulation of the institutions involved in its implementation is still pending, as are broad promotion and awareness of the protocol among Salvadoran society. As a result, only 10 complaints have been filed with the TSE and one with the Attorney General's Office.

In light of the above, the OAS/EOM recommends:

- Fully implementing the "Protocol for the Prevention and Care of Women Victims of Political Violence" through inter-agency coordination and articulation and the establishment of specific care options.
- Creating an Observatory on Political Violence against Women that will keep records and follow up on complaints, generate statistics, analysis, and information that will allow the development of public policies and concrete actions to combat this problem.
- Incorporating political violence as a crime in both the penal code and the LEIV.

## **FINAL CONSIDERATIONS**

Preliminary official results so far show a wide lead of presidential candidate Nayib Bukele over his opponents. Likewise, according to the polls presented, the political party Nuevas Ideas is likely to obtain a supermajority in the Legislative Assembly which, if confirmed, would provide the President of the

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<sup>88</sup> See: [https://andryas.org/sv/wp-content/uploads/2024/02/Informe\\_Violencia\\_politica.pdf](https://andryas.org/sv/wp-content/uploads/2024/02/Informe_Violencia_politica.pdf)

<sup>89</sup> LEIV, Article 10.



Republic with mandate possibilities calling for a high level of responsibility and a deep commitment to democracy. This will be decisive in guaranteeing the future of democracy in El Salvador.

Article 3 of the Inter-American Democratic Charter establishes among its essential elements the separation and independence of the branches of government.<sup>90</sup> In this regard, the Inter-American Court has stated that "The separation of State powers into different branches and organs is linked closely with the aim of preserving related freedoms, with the understanding that concentration of power leads to tyranny and oppression. At the same time, the separation of State powers allows for the efficient fulfillment of the various aims entrusted to the State."<sup>91</sup>

It has also stated that "the separation and independence of powers assumes the existence of a system of controls and oversight to constantly regulate the balance of powers."<sup>92</sup>

Likewise, the Inter-American Democratic Charter establishes that respect for human rights and fundamental freedoms are essential elements of representative democracy, which in turn allow for periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people. The Mission reiterates its findings contained in this report on actions that could have generated a climate of self-censorship for the exercise of rights and freedoms in the framework of the electoral process. However, it noted that, in general terms, political and social actors were able to participate in all stages of the electoral process. Nevertheless, it did note that it is necessary to work to make elections in El Salvador fairer and more equitable. Fairness in the contest is an attribute and a right that must be observed in any election process.<sup>93</sup>

In the same vein, the OAS/EOM points out that democratic decision-making requires a plurality of political and civil society voices, economic actors, and academia. The Mission recognizes that these voices faced obstacles to remain active throughout the electoral process and prior to the day, and we reiterate that civic space must be respected and strengthened in the future. The diversity of thoughts and ideas, as well as respect for minorities, is an asset and a value of democracy that encourages debate and generates knowledge.<sup>94</sup>

Governing in a democracy implies not only respecting these and other components of representative democracy, but also protecting them. This is the great responsibility that the Salvadoran people have clearly placed on the President of the Republic, his supporters, and the newly elected legislative authorities.

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<sup>90</sup> Democratic Charter, Article 3. Available at: [https://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](https://www.oas.org/charter/docs/resolution1_en_p4.htm)

<sup>91</sup> Advisory Opinion No. 28/21 of the I/A Court H.R.

<sup>92</sup> Ibid.

<sup>93</sup> OAS Guide to Best Practices in Electoral Matters, p.56. See:

[https://www.oas.org/documents/spa/press/VF\\_OEA\\_guia\\_buenas\\_practicas\\_WEB.pdf](https://www.oas.org/documents/spa/press/VF_OEA_guia_buenas_practicas_WEB.pdf) [Version actualizada 2023]

<sup>94</sup> Ibid, p.17.



The OAS/EOM will remain in situ for the completion of the vote count. We call on the TSE to initiate the final vote count process as soon as possible in order to have the official results. The Mission will return to El Salvador to observe the elections to the Central American Parliament and the integration of the Municipal Councils on March 3, 2024 and, subsequently, will present its Final Report on both electoral processes to the OAS Permanent Council.

## **ACKNOWLEDGMENTS**

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