



European Union
Election Follow-up Mission
EL SALVADOR
Final Report



December 2019



**European Union
Election Follow-Up Mission
to El Salvador**

FINAL REPORT

El Salvador
19 November – 20 December 2019

The Election Follow-up Mission is independent from the institutions of the European Union. The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy and position of the European Union.

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ACRONYMS

ARENA Nationalist Republican Alliance (*Alianza Republicana Nacionalista*)

ARPAS El Salvador Participative Radio Broadcasting Association (*Asociación de Radiodifusión Participativa de El Salvador*)

ASRER Salvadoran Radio Broadcasting Association (*Asociación Salvadoreña de Radiodifusores*)

CC SCJ Constitutional Chamber of the Supreme Court of Justice (*Sala de lo Constitucional de la Corte Suprema de Justicia*)

COMURES El Salvador Municipalities Corporation (*Civil Registers and Municipality Association*)

CONAIPD National Council for Persons with Disabilities (*Consejo Nacional de Atención Integral a la Persona con Discapacidad*)

CRE Consortium for Electoral Reforms (*Consortio Reformas Electorales*)

CRPD Convention on the Rights of Persons with Disabilities

DC Democratic Change (*Cambio Democrático*)

DS Salvadoran Democracy (*Democracia Salvadoreña*)

DUI National Identity Card (*Documento Único de Identidad*)

EU EFM European Union Election Follow-up Mission

EU EOM European Union Election Observation Mission

FMLN Farabundo Martí National Liberation (*Frente Farabundo Martí para la Liberación Nacional*)

GANA Grand Alliance for National Unity (*Gran Alianza por la Unidad Nacional*)

GPM Women Parliamentary Group (*Grupo Parlamentario de la Mujeres*)

ICCPR International Convention on Civil and Political Rights

IRI International Republican Institute

ISD Social Initiative for Democracy (*Iniciativa Social para la Democracia*)

IT Information Technology

JED Departmental Electoral Management Board (*Junta Electoral Departamental*)

JEM Municipal Electoral Management Board (*Junta Electoral Municipal*)

JRV Polling Station (*Junta Receptora de Votos*)

JVE Election Oversight Board (*Junta de Vigilancia Electoral*)

LGBTI Lesbian, Gay, Bisexual, Transgender, and Intersex

NDI National Democratic Institute

NGO Non-Governmental Organisation

NI *Nuevas ideas*

NIMD The Netherlands Institute for Multiparty Democracy

NT *Nuestro Tiempo*

OAS Organization of American States

OCV Out-of Country Voting

OET Temporary Electoral Bodies (*Organismos Electorales Temporales*)

PARLACEN Central American Parliament (*Parlamento Centroamericano*)

PCE Civic Electoral Platform (*Plataforma Electoral Ciudadana*)

PCN Party of National Concertation (*Partido de Concertación Nacional*)

PDC Christian Democratic Party (*Partido Demócrata Cristiano*)

PLAGEL TSE Strategic Plan (*Plan General de Elecciones*)

PDDHH Human Rights Ombudsperson's Office (*Procuraduría para la Defensa de los Derechos Humanos*)

PSD Social Democratic Party (*Partido Social Demócrata*)

PSP Progressive Salvadoran Party (*Partido Salvadoreño Progresista*)

RNES National Radio of El Salvador (*Radio Nacional de El Salvador*)

RNP National Civil Registry (*Registro Nacional de Personas Naturales*)

SIGET National Bureau of Electricity and Telecommunication (*Superintendencia General de Electricidad y Telecomunicaciones*)

TSE Supreme Electoral Court (*Tribunal Supremo Electoral*)

TVES Television of El Salvador (*Televisión de El Salvador*)

UNCAD *United Nations Convention Against Corruption*

UNDP United Nations Development Programme

I. EXECUTIVE SUMMARY

An European Union Election Follow-up Mission (EU EFM) was deployed to El Salvador from 19 November to 14 December 2019 to assess the degree to which the recommendations of the EU Election Observation Missions (EU EOMs) in 2018 and 2019 have been implemented and the progress made in electoral reforms since the last presidential election. The Mission was led by Carlos Iturgaiz, Chief Observer of the 2018 and 2019 EU EOMs. The Mission met with Government officers, the Supreme Electoral Court (TSE) magistrates, the Electoral Supervisory Board (JVE), members of the Legislative Assembly, the President of the Supreme Court of Justice (CSJ), political parties, civil society organisations, media, international organisations and EU member states.

The EU EFM conducted its activities with two main objectives. Firstly, to assess the status of the implementation of the 45 recommendations offered by the two EU EOMs. Secondly, to identify those recommendations that could still be implemented ahead the legislative, municipal and PARLACEN elections, scheduled for 28 February 2021.

The EU EFM took place relatively shortly after the swearing-in ceremony of President Nayib Bukele (May 2019), the appointment of the new government (June 2019) and the renewal of the Supreme Electoral Court (TSE)'s magistrates (July 2019) for the period 2019-2024. As informed by the EU EOM in 2019, the landslide victory of President Nayib Bukele in the presidential election has brought an end to the country's established bipartisan political framework. However, the two parties that have dominated the political scene in El Salvador continue to prevail in the 84-deputy Legislative Assembly which is still dominated by the National Republican Alliance (ARENA) with 35 deputies and the Farabundo Martí National Liberation Front (FMLN) with 18 deputies, and where the Executive is not represented. Being out of the Legislative Assembly, President's Bukele party *Nuevas Ideas* could not participate in the selection and appointment of the TSE magistrates.

Also, the EU EFM took place shortly before the deadline to pass any change in the law to be applicable for the 28 February 2021 elections. Indeed, the Electoral Code in El Salvador forbids modifications to applicable legislation during the year prior to an election. Therefore, all changes aiming to modify the legal framework for the 28 February 2021 elections should come into force by the end of February 2020. This limitation does not concern regulations or instructions issued by the TSE or other State bodies.

In this context, given the recent changes in the Executive and in the TSE, so far little progress was made to implement the EU EOMs recommendations. The Legislative Assembly has approved five reforms to the Electoral Code: increasing the maximum number of voters per polling station (JRV), a new seat allocation system for independent candidates and gender parity in legislative independent candidates' tickets. The latter partially addresses recommendations of the 2018 and 2019 EU EOMs. Two reforms were vetoed by president Bukele: sanctions to judges, municipalities civil and National Registry of Natural Persons (RNPN) officials who fail to report disqualifications from voting and deceases to the TSE, and the inclusion of the photo of the mayoral candidates on the ballot papers. This last veto was overruled by the Legislative Assembly on December 2019. While the approved reforms aim to a smooth and more inclusive and transparent 2021 elections, the Legislative Assembly have not yet undertaken significant, long-demanded reforms on strategic and fundamental issues, as recommended by the EU EOMs and civil society organisations. Civil society organisations have criticised the slow pace of electoral reforms.

On 4 December, the EU EFM organised a stakeholder roundtable “The way forward for the implementation of the 2018 & 2019 EU EOMs recommendations”, aiming to bring together electoral stakeholders to discuss on the challenges and opportunities for the implementation of the 2018 and 2019 EU EOMs recommendations. The event was chaired by the EU EFM Chief of Mission, Carlos Iturgaiz and the president of the TSE, Dora Esmeralda Martínez de Barahona and the EU ambassador, Andreu Bassols and attended by TSE representatives, political parties, and civil society organisations, international organisations, the EU Delegation and EU member states. The roundtable focused on EU EOMs priority recommendations and on those whose implementation is feasible during the 14 months remaining to the 2021 elections. In this event, Carlos Iturgaiz underlined that *“all interlocutors are aware of the rush of time and the complexity of the 2021 elections”* and suggested that *“the debate [on electoral reforms] be undertaken in a more strategic and inclusive manner”* as *“there is little time left for political parties to seek consensus that will allow them to move forward on the reform agenda, particularly if they contemplate changes in the law.”*

Despite the limited progress, given the significant number of proposals for electoral reforms that are being discussed as well as the openness of the Legislative Assembly, political parties and the TSE to discuss those with interested stakeholders, including government officials and civil society organisations, the EU EFM believes that there is still time for all parties and responsible institutions to seek consensus to advance on reforms.

As of December 2019, only two of the 2018 and 2019 EU EOMs recommendations, related to gender parity in the independent candidates’ tickets, have been partially addressed. A total of 11 recommendations are at discussion phase; for 22, no action has been taken. There are 10 recommendations whose implementation is too early to be determined. As per the type of change required for implementation, 31 recommendations can be addressed through amending existing legislation or adopting new one, and 14 can be implemented by the TSE and other State institutions through administrative and/or operational changes

The EU EFM considers that it would be beneficial to address electoral reforms in a more strategic manner, focusing first on those that could have the greatest impact for the 2021 legislative, municipal and PARLACEN elections which will be highly challenging given their complexity (open list panachage system). This includes reinforcing TSE institutional capacities by ensuring its independence through the approval and allocation of an adequate budget, reinforcing its control over campaign financing, strengthening training of and delivering clear instructions to polling station staff on the counting procedures and clear criteria for the determination of the validity of the ballots, with respect to the voter’s intent. Also, this entails applying more proportionality in the sanctions scheme for election offences, continuing with the *depoliticisation* of polling station staff, real gender parity in lists of candidates and enhanced mechanisms for the transmission of election results.

The high pace of the electoral calendar in El Salvador (legislative and municipal elections in March 2018, presidential elections in February 2019) and often overlapping legislative and presidential majorities do not help to reflect and agree on reforms that are needed for the long-term. However, the EU EFM considers that it would be possible and valuable to adopt a more gradual approach for those reforms, for example by agreeing on transitional provisions allowing progressive implementation of reforms over the years. This would help disconnecting the electoral cycles and changing majorities from the much-needed discussions and agreements on the nature and the extent of long-term reforms.

II. MISSION INFORMATION

As an important element of the EU continuous support to the consolidation of democracy, an EU Election Follow-up Mission (EU EFM) was deployed to El Salvador from 20 November to 14 December 2019 to assess the degree to which the recommendations of the 2018 and 2019 EU EOMs had been implemented and the progress made on electoral reforms since the last presidential election. The European Union deployed two Election Observation Missions (EU EOMs) to El Salvador in 2018 and 2019 to provide a comprehensive, independent and impartial assessment of the 2018 legislative and municipal elections, and the 2019 presidential election. Both missions formulated a total 45 recommendations identifying areas of improvement.

The EU EFM was led by Carlos Iturgaiz, former Chief Observer of both EOMs, and comprised of two experts. The EU EFM met with the Government, the Supreme Electoral Court (TSE), the Legislative Assembly, the Supreme Court of Justice (CSJ), the Human Rights Ombudsperson, members of the Electoral Oversight Board (JVE), representatives from the political parties, and civil society organisations, from the media, technical assistance providers and the diplomatic community.

III. CONTEXT

1. Political context

The February 2019 presidential election marked a turning point in El Salvador. For the first time since the 1992 peace accords, a candidate who did not belong to any of the two parties that have dominated the political scene during the last 27 years was elected president in an election that the EU assessed as credible and transparent and well-organised. President Nayib Bukele (*Nuevas Ideas*) took office in June. Since then, his policies have been mainly focused on the reduction of the criminality and on a business-oriented economy approach. Bukele maintains high popularity, with approval rates of 91 per cent according to the latest surveys.¹

Bukele's victory represents an overturn in El Salvador political scenario, characterised in the last three decades by the check and balances between the two major parties, the Nationalist Republican Alliance (ARENA) and the Farabundo Martí Liberation Front (FMLN). Besides, *Nuevas Ideas* did not participate in the 2018 parliamentary elections and is therefore not represented in the 84-deputy Legislative Assembly, where the ARENA with 35 and FMLN with 18 deputies each have the majority of the seats.²

Being out of the Legislative Assembly, *Nuevas Ideas* could not participate in the selection and appointment of members of State institutions that the Constitution bestows upon the Legislative Assembly. This includes the Supreme Electoral Court. On 30 July, the Legislative Assembly appointed the ten TSE magistrates (five principals and five alternates) who will serve for the 2019-2024 term. Six of them were selected based on proposals from the parties or coalitions with the highest votes in the preceding presidential election: GANA, ARENA and its coalition parties

¹ A survey published on 9 December 2019 shows a 91 per cent approval for Bukele during his first six months in office. Source: <https://www.laprensagrafica.com/elsalvador/Presidente-Bukele-con-91-de-aprobacion-tras-primeros-seis-meses-20191210-0477.html>

² The other parties and coalitions in the Assembly with two or more seats are: Grand Alliance for National Unity, GANA (10), The National Concertation Party, PCN (8), ARENA-PCN (3), FMLN-CD (3), and Christian Democratic Party PDC (2).

and FMLN. The remaining four, from proposals submitted by the Supreme Court of Justice (CSJ). The presidency of the Tribunal corresponds to the principal candidate proposed by GANA, as the party with most votes in the 2019 presidential election.³ Only one out of the five new principal magistrates, repeats from the previous term.⁴ As a registered political party, *Nuevas Ideas* is represented in the Election Oversight Board (JVE).

Civil society organizations criticized the selection process of TSE magistrates for alleged connections of the selected candidates to political parties⁵, which is contrary to constitutional jurisprudence on the matter.⁶ In fact, a unconstitutionality claim was filed against the TSE magistrates selection process for procedural flaws, to be decided upon by the Constitutional Chamber.⁷ A late decision could have a major impact on the preparations for the elections.

2. Institutional context

The Legislative Assembly

The Electoral and Constitutional Reforms Commission (*Comisión de Reformas Electorales y Constitucionales*) of the Legislative Assembly agreed on July 2019 on a ten-point roadmap on electoral reform.⁸ These comprised the review of the open-list panachage electoral system currently in place for the legislative and PARLACEN elections, a new system of allocation of seats to independent candidates, provisions for the out-of-country voting in legislative and municipal elections, and the synchronization of the electoral periods. The roadmap also took into consideration proposals that partially address EU EOM recommendations, such as the modification of existing provisions on election campaign on the use of party colours in and around the polling centres, and documented technological solutions for the tabulation and transmission of preliminary and final results. For the 2024 electoral cycle, the Commission is also considering the separation of TSE institutional and administrative functions, which according to the proposal under discussion would need a constitutional reform.

The Commission has discussed other reforms not initially envisaged in the roadmap, including the exclusion of the political parties from proposing members to the polling station staff) (*depoliticisation*), provisions for gender parity and alternation in the lists of candidates. These two proposals are in line with EU EOMs recommendations. Conversely, some proposals on electoral reform submitted, the TSE and civil society organisations, such as the financial independence of the TSE has not been so far taken into consideration by the Commission.

With the exception of a new system for seat allocation for independent candidates, the Legislative Assembly have not yet approved any of the reforms in the roadmap. While electoral reforms

³ *Nuevas Ideas* was registered on 10 September 2018. The party missed the deadline to participate in the presidential election as the internal party elections to elect the presidential candidates had to be held at least two months before the official call for elections. The TSE called the 2019 presidential election on 2 October 2018. Bukele then tried to register as candidate with the Democratic Change (CD) ticket with no success as the party was in the process of a contentious and still ongoing de-registration. Finally, Bukele stood as GANA's presidential candidate.

⁴ Julio Olivo, former president of the TSE in the period 2014-2019, proposed by the FMLN. Another principal magistrate, Rubén Atilio Meléndez, proposed by the Supreme Court of Justice, was an alternate magistrate in the previous period.

⁵ <https://www.elsalvador.com/eldiariodehoy/jose-miguel-arevalo-estan-proponiendo-candidatos-al-tse-con-claros-vinculos-partidarios/625496/2019/>

⁶ Decision 18-2014 of the Constitutional Chamber states that members of the TSE cannot be linked to political parties.

⁷ <https://www.elsalvador.com/eldiariodehoy/sala-admite-demanda-contra-eleccion-de-magistrados-del-tribunal-supremo-electoral-2019-2024/652747/2019/>

⁸ The Commission has ten members: four from ARENA, two from FMLN and GANA respectively and one for each of PNC and PDC.

requiring legislative change can be adopted by majority vote of the Legislative Assembly⁹, the overall intention presiding the discussions on electoral reforms at the Commission is to reach the highest consensus possible.

In total, the Legislative Assembly has so far approved five reforms to the Electoral Code: increasing from 600 to 700 electors the maximum number of voters per polling station (JRV), a new seat adjudication system for independent candidates and gender parity in legislative independent candidates' tickets.¹⁰ The latter partially addresses recommendations of the 2018 and 2019 EU EOMs. The Assembly also approved sanctions to judges, municipalities civil and National Registry of Natural Persons (RNPN) officials who fail to report deceases and disqualifications from voting and to the TSE, and the inclusion of the photo of the mayoral candidates on the ballot papers.

While these approved reforms may aim to a smooth and more inclusive and transparent 2021 elections, the Legislative Assembly have not yet undertaken significant, long-demanded reforms on strategic and fundamental issues. For instance, only in December 2019, ARENA submitted to the Assembly a draft amendment to constitutional provisions on the separation the jurisdictional and administrative functions of the TSE structures and to exclude the political parties from the selection process of the magistrates.¹¹ Constitutional reforms should be adopted by single majority of the deputies of the Assembly and ratified by two thirds in the following legislative period. The FMLN has publicly said that it does not fully support the *depoliticisation* of the TSE.

In the past, key aspects of the legal framework for elections were modified following decisions of the Constitutional Chamber (CC). Those include the electoral system of the legislative and PARLACEN elections,¹² the right to stand of independent candidates in legislative elections,¹³ and the *depoliticisation* of TSE structures.¹⁴ Some of these decisions were issued late in the electoral cycle and put to strain the TSE capacity to deliver credible elections. Contrary to the previous magistrates, the current Constitutional Chamber has so far not taken any leading role in electoral reforms.

Civil society organisations have criticised the slow pace of electoral reforms. On 11 December, the Civil Electoral Platform (*Plataforma Ciudadana Electoral, PCE*) urged the Legislative Assembly to move forward towards the implementation of electoral reforms and expressed concerns about the “lack of interest” to keep on with the roadmap for electoral reform agreed upon by the Electoral and Constitutional Reforms Commission (CREC) in July 2019. The Platform also urged the Government and the Legislative Assembly to respect the financial

⁹ A total of 43 out of the 84 deputies of the Legislative Assembly.

¹⁰ Decrees 294, 295, 450, 466 and 475, approved between April and November 2019.

¹¹ On 26 September 2019. <https://elmundo.sv/diputados-piden-despartidizar-del-todo-al-tse/>

¹² The Constitutional Chamber Decision 61-2009 established that the block list system in place at the time in El Salvador was unconstitutional for it violated the principle of free vote enshrined on article 78 of the Constitution. Decision 48-2014, issued in November 2014, reiterated the right of voters to choose among candidates from different party lists. Both decisions prompted the quick adoption of the open-list cross-over vote system in place for the first time in the March 2015 elections, only four months after the decision was published.

¹³ CC Decision 61-2009 declared that the obligation of candidates to be affiliated to a political party was unconstitutional, paving the way for independent candidates to stand for Legislative Assembly and PARLACEN elections.

¹⁴ CC Decision 18-2014 of June 2014 stated that the election of the at the time TSE president was unconstitutional on grounds of his party affiliation. The decision also established that the TSE magistrates elected for future terms should not be affiliated to political parties. CC Decision 193-2013 of July 2015 established that the members of the departmental and municipal electoral boards and the polling station staff should not be affiliated to political parties.

autonomy of the TSE and ensure that the Tribunal is provided in a timely manner with adequate resources for the administration of the 2021 elections.¹⁵

Presidential vetoes to Legislative Assembly decrees on electoral reforms

On 19 and 20 November, president Bukele vetoed legislative decrees 466 and 475 on sanctions to judges, civil and national register officers and on the inclusion of mayoral candidates on the ballot paper, respectively. In the veto to Decree 466, it was argued that sanctioning registry officers would violate constitutional principles of pluralism, publicity and free debate, since the bodies involved in the compilation of the civil registers were not consulted by the Assembly during the discussion of the amendment. Following discussions municipal and RNPN representatives on 10 December 2019, the president of the Electoral and Constitutional Reforms Commission announced that the decree would be redrafted with contributions from all the affected institutions, in line with the reasoning of the veto.

In the case of Decree 475, the veto was based on the alleged violation of the principle of equality, as the picture is only requested to mayoral candidates and not to other candidates to municipal councils. On 5 December 2019, the Legislative Assembly overruled the presidential veto to Decree 475 with 64 votes and therefore the reform will be applicable to the 2021 legislative elections.¹⁶ Still, the president may appeal to the Constitutional Chamber.

In line with good international practice, the Electoral Code forbids amending applicable legislation during the year prior to an election.¹⁷ Therefore, all changes aiming to modify the legal framework of the 28 February 2021 elections should come into force by the end of February 2020. This limitation does not affect regulations or instructions issued by the TSE or other state bodies.

The Supreme Electoral Court (TSE)

The recently elected TSE has begun preparations for legislative, municipal and PARLACEN elections, scheduled for 28 February 2021. Thus, it has published and widely disseminated the electoral calendar through its social networks and has already submitted its budget to the Ministry of Finance. The magistrates have had an open and consultative approach towards political parties and civil society organisations and have discussed proposals for election reforms as well as the options for electronic tabulation and transmission of preliminary and final results, with an expected cost of up to 20 million dollars.

The TSE has shown a commitment to address some of the EU EOM recommendations, including strengthening campaign financing auditing by creating a dedicated unit and reinforcing training of polling station staff. Given the timeframe for amending existing legislation or adopting new one, it is urgent to clarify whether reforms under discussion affecting key components of the election operations, such as the *depoliticisation* of the selection process of polling station staff, will finally be adopted.

¹⁵ <https://twitter.com/CiudadanaAccio1/status/1204765940887490563/photo/3>

¹⁶ Presidential vetoes can be overruled by a two-thirds vote (56 out of 84 Legislative Assembly members).

¹⁷ Article 291A, Electoral Code.

3. *EU actions on EOM follow-up*

After assessing the status of the 45 recommendations from the EU EOMs 2018 and 2019, the EU EFM established a set of 32 consolidated recommendations with parameters, namely: timeframe for implementation (before/after the 2021 elections), type of reforms to be implemented (legal/administrative), and possible impact (high/medium/low) for the 2021 elections in view of the complexity of the vote (open list cross over voting system).

These three parameters enabled the EU EFM to identify and focus on attainable recommendations, i.e. recommendations which could be realistically implemented by the 2021 elections (based on discussions and/or proposals for reforms in the country) through legal and/or administrative measures and with possible impact on the process. This included recommendations on sanctions by the TSE, *depoliticisation* of TSE temporary bodies, financial independence of the TSE, gender parity, training of polling staff, and on counting processes, including validity of the vote and tabulation of results. These recommendations were given priority in the public messaging of the 2019 EU EFM.

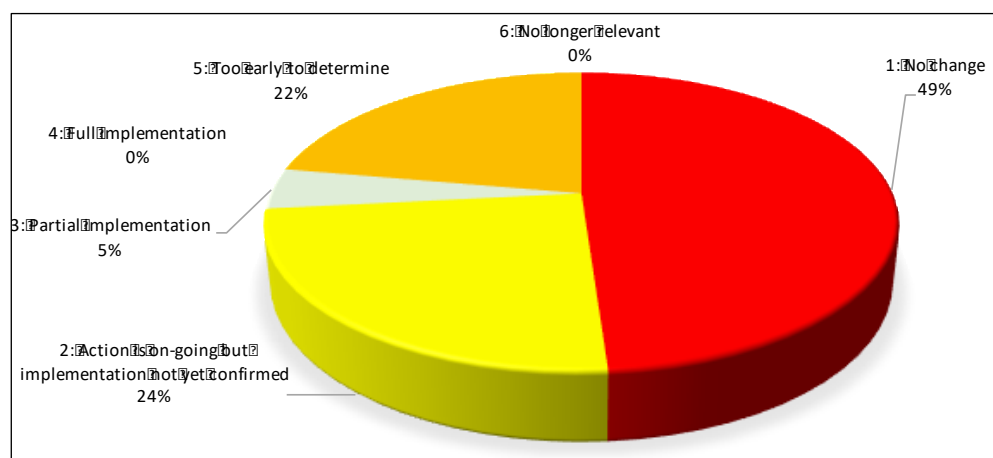
IV. STATUS OF THE IMPLEMENTATION OF THE EU EOMs RECOMMENDATIONS

1. *Overview*

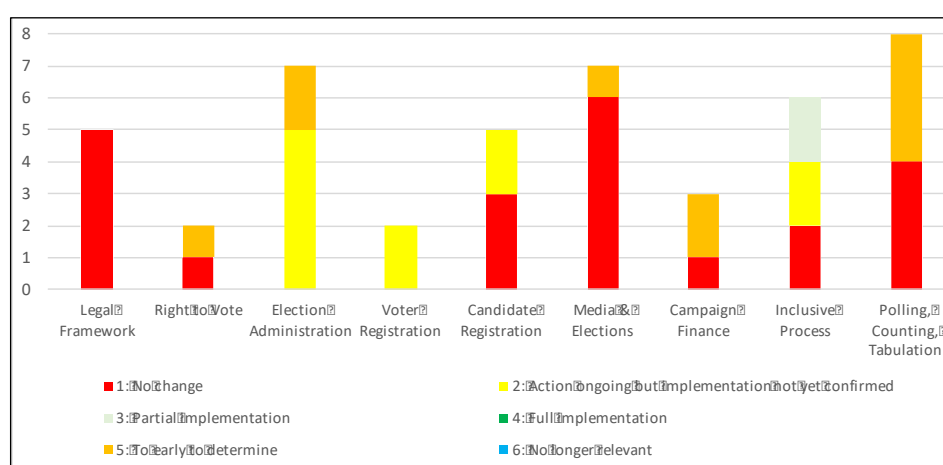
The 2018 and 2019 EU Election Observation Missions (EU EOM 2018 and EU EOM 2019) issued 23 and 22 recommendations respectively. The EU EOM 2018 proposed recommendations on the separation of the Supreme Electoral Court (TSE) administrative and judiciary functions, the consolidation of the *depoliticisation* of TSE temporary bodies, including the polling station staff (JRVs), training, review of polling, counting procedures and the transmission of results, TSE financial independence, public media, election campaign and financing, gender parity, and the inclusive participation of indigenous peoples, persons with disabilities and the LGBTI community. The 2019 EOM also addressed electoral reform, voting restrictions, fact-checking, community media, and data processing quality control.

Overall, there are 45 recommendations: 31 can be addressed through legal reform (among them three needing constitutional reform) for effective implementation and 14 can be implemented through administrative and/or operational changes. For systematization purposes, the EU EFM has consolidated the EU EOM 2018 and 2019 recommendations into 32: both EU EOMs shared 12 of them and 19 were exclusive of each. Two recommendations from 2018 have been consolidated into one. (*See annex 3*)

So far, little progress was made to address the EU EOMs recommendations. As of December 2019, none of the 45 recommendations was fully implemented. Only two, related to gender parity on the list of candidates, have been partially addressed through an amendment to the Electoral Code. A total of 11 recommendations are at discussion phase; for 22, no action has been taken, with 10 recommendations whose implementation is too early to determine. (*See graphs 1 and 2*)



Graph 1: Status of implementation of the EU EOMs recommendations



Graph 2: Status of implementation of the EU EOMs recommendations by area of observation

The EU EFM is aware of the time constraints involved for the implementation of recommendations requiring legislative change, derived from an electoral calendar with presidential elections and legislative and municipal elections held in an unsynchronised way and the prohibition, in line with international good practice, to adopt any legal reform applicable to an election during the preceding year.¹⁸ Electoral cycles in El Salvador can be short, with a maximum period of three years between elections (with only two years available for electoral reforms).¹⁹ The holding of successive elections in relatively short periods of time and consecutive close political campaign periods may undermine the chances for an inclusive, strategic and open discussion on the reforms needed in the long-term. (*See table 1*)

¹⁸ Article 291A, Electoral Code.

¹⁹ Presidential elections are held every five years and legislative and municipal every three. The synchronization of legislative and presidential period is included in the agenda for reforms of the Constitutional and Electoral Reforms Commission of the Legislative Assembly, but it has not been yet discussed.

No. Of recommendations	EU EOM 23	EU EOM 22	Total EU 45	Consolidated 32
1. No change	11 48%	11 50%	22 49%	17 53%
Requiring constitutional change	0	3	3	3
Requiring primary legislation change	11	8	19	14
Requiring administrative / operational change				
2. Ongoing action or activity	6 26%	5 23%	11 24%	6 19%
Requiring constitutional change				
Requiring primary legislation change	4	3	7	4
Requiring administrative / operational change	2	2	4	2
3. Partial implementation	1 4%	1 5%	2 4%	1 3%
Requiring constitutional change				
Requiring primary legislation change	1	1	2	1
Requiring administrative / operational change				
4. Full implementation	0 0%	0 0%	0 0%	0 0%
Requiring constitutional change				
Requiring primary legislation change				
Requiring administrative / operational change				
5. Too early to determine	5 22%	5 23%	10 22%	8 25%
Requiring constitutional change				
Requiring primary legislation change				
Requiring administrative / operational change	5	5	10	8
6. Recommendation is no longer relevant	0 0%	0 0%	0 0%	0 0%

Table 1: Status of implementation by level of required reform

Despite this, the EU EFM considers that it would be possible and valuable to adopt a more gradual approach for those reforms, by disengaging the much-needed discussions and agreements on the nature and the extent of long-term reforms from the electoral cycles and the overlapping electoral periods. Also, the EU EFM considers that it would be beneficial to address electoral reforms in a more strategic manner, focusing first on those that could have the greatest impact for the 2021 legislative, municipal and PARLACEN elections.

2. Legal framework

(EU EOM 2018 recommendations 1 to 2; EU EOM 2019 recommendations 1 to 3)

The 2018 and 2019 EU EOMs offered five recommendations to improve the legal framework on election disputes. They refer to the need for adjusting administrative and penal sanctions for electoral infractions, and the provision of clear deadlines and procedures to process claims and appeals in a timely manner, including for the resolution of appeals upon the Constitutional Chamber. To date, none of these five recommendations have been addressed. Although the Electoral and Constitutional Reforms Commission initially included addressing changes to sanctions scheme on electoral offences, the subject has not been so far discussed in-depth. The Commission has not tackled either the review of existing deadlines on procedures for the submission and resolution of appeals.

Amendment to existing provisions of the Electoral Code (chapter VIII, sections 2 to 5 and chapter IX) as well as the Penal Code and the Law on Constitutional Procedures would be needed to that aim. The TSE however can enforce compliance with existing legislation by issuing regulations to establish a detail mechanism of fines for early campaign propaganda and disrespect of the electoral silence periods, and also by introducing clear timeframes and deadlines for the resolution of election disputes.

3. *Right to vote* (EU EOM 2019 recommendations 4 and 5)

The 2019 EU EOM recommended removing limitations on the right to vote based on subjective grounds such as notoriously flawed conduct and on advocating for the re-election of the President. The recommendation also addressed the disenfranchisement of convicted citizens. Blanket exclusions are not in line with international principles El Salvador is signatory, namely the 1966 International Covenant on Civil and Political Rights (ICCPR) and its general comments.

Limitations on the right to vote are provided for in articles 74 and 75 of the Constitution. Therefore, the recommendation can only be addressed through a constitutional reform. This requires a double majority vote mechanism: any constitutional amendment should be proposed by at least ten deputies, adopted by the Legislative Assembly by the majority of deputies and then ratified by two-thirds in the following legislative period. To date, no constitutional reform to extend the right to vote to convicted persons is under discussion at the Legislative Assembly. Civil society organisations noted that such initiative would be unpopular given the high criminality rates in El Salvador. Similarly, the elimination of disenfranchisement for subjective grounds is neither under consideration nor it is advocated for.

The EU EOM also recommended to the TSE to guarantee the effective exercise of the right to vote to pre-trial detainees. The legal framework for elections does not foresee alternatives to the in-person vote for voters in the country and therefore, eligible voters who cannot vote at their designated polling stations on Election Day are effectively deprived from polling. These include also people in hospitals or with physical impairments. In this regard, the office of the Ombudsperson in El Salvador (*Procuraduría para la Defensa de los Derechos Humanos, PDDH*) admitted that the TSE and other State authorities should endeavour to provide for the effective voting of this category of voters, including pre-trial detainees. To date, the TSE has not foreseen any initiative in this regard, on grounds that facilitating the vote of detainees by setting polling stations in prisons or police stations would be highly unpopular in a country with high criminality rates.

4. *Election administration* (EU EOM 2018 recommendations 8 to 12; EU EOM 2019 recommendations 8 to 10)

The EU EOMs to El Salvador offered a total of eight recommendations aiming at strengthening TSE financial capacities as the institution in charge of the electoral processes, the exclusion of the political parties from proposing members to TSE temporary bodies, the separation of the administrative and jurisdictional functions of the TSE and the reinforcement of its internal structures and communication among different departments.

- Exclusion of political parties from proposing members to TSE temporary structures

Both EU EOMs considered the *depoliticisation* of the TSE temporary structures as priority recommendation, also a long-standing demand of civil society organisations. Moreover, a survey conducted in June 2019 indicated an overall popular endorsement for such change.²⁰ In September 2019, the Legislative Assembly started to discuss at commission level the amendments to the Electoral Code required for such reform. However, parties disagreed on the

²⁰ According to a survey conducted by the Consortium on electoral reforms (*Consortio Reformas Electorales “Sin vos, no hay democracia”*), 83.7 per cent of the Salvadorans support the *depoliticisation* of the polling station staff.

extent and the timing for its implementation. ARENA, GANA, PCN and PDC would back the adoption of the reform in time for the 2021 elections. FMLN representatives met by the EU EFM argued that the Constitution provides for the involvement of the political parties in the organisation of the elections and therefore preferred to continue with the discussions in the long-term since, in its opinion, there is not time for this reform to be passed and for the TSE to prepare the operational arrangement this reform would entail.

Considering the tight timeframe for its implementation and its consequence in terms of organisation, the adoption of this reform for the 2021 elections will imply for the TSE to modify its plans and budget accordingly. The TSE would have to review its mechanisms to select, contract and train the polling station staff, an activity the UNDP plans to support.

- Separation of the TSE administrative and jurisdictional functions.

The separation of the administrative and jurisdictional functions of the TSE have been discussed by political parties and civil society organisations during the post-2019 elections phase. A report by Consortium for Electoral Reforms in September 2019 concluded that around 90 per cent of the TSE tasks, human and material resources are dedicated to administrative and operational functions. The TSE departments in charge of the jurisdictional functions are normally less staffed and resourced compared to the other departments, limiting TSE's ability to deliver electoral justice timely and effectively.

On 27 November, GANA, ARENA, PDC and PCN submitted a draft amendment to the Constitution to separate the TSE in two institutions. According to the proposal, the TSE would become a jurisdictional body composed of three members elected by the Legislative Assembly for a period of nine years from proposals submitted by the Supreme Court of Justice (CSJ). The proposal also envisaged the creation of an administrative institution in charge of organising the elections, whose three members would be selected by Legislative Assembly from proposals received by the political parties. However, depending on the extent of the changes, the EU EFM believes that an amendment to the Constitution would not be needed to comply with the EU EOMs recommendations.²¹

- Strengthening TSE financial capacities

The TSE has submitted a proposal to the Legislative Assembly aiming at ensuring its financial independence. The proposal envisaged amending article 274 of the Electoral Code in order for the Ministry of Finance not to modify the TSE budget. To date, the proposal has not been discussed at commission level. Civil society organisations met by the EU EFM considered that the lack and late disposal of financial resources have traditionally had an impact on the TSE's ability to organise the elections.²² Strengthening of TSE's financial capabilities was among the recommendations offered by the Consortium for Electoral Reforms.²³

- Reinforcement of TSE internal structures and communication

The TSE has considered the reinforcement of its internal structures in his 2020 Strategic Plan (PLAGEL), including offering adequate training to polling station staff with the assistance of UNDP Electoral Support Project, as during the 2018 and 2019 elections.²⁴ The EU EOMs recommendations in this regard are in line with civil society organisations that have been

²¹ Article 208 of the Constitution.

²² *Plataforma Ciudadana Electoral*, August 2019 Report, p.9.

²³ *Consortio Reformas Electorales*, September 2019 Report, recommendation 25.

²⁴ The UNDP Electoral Support Project foresees for an operational support in planning and advice on training and procedures, logistics and field coordination and support to building capacity of TSE at national and sub-national levels.

suggesting amendments to the Electoral Code in order to professionalize TSE's temporary electoral bodies (OET) and to increase their capacities.²⁵ The EU EFM has noted the commitment existing among the TSE and the civil society organisations to collaborating and seeking viable and effective solutions through administrative changes and/or reinforcements of resources.

The recently-elected TSE magistrates face a demanding task ahead of them. Several reforms currently under discussion at the Legislative Assembly will definitely have an impact in preparation for the February 2021 elections, with three simultaneous races (legislative, municipal and PARLACEN), larger number of voters to process at polling stations, complex procedures for voting and counting and the responsibility to deliver credible provisional and final results in a timely and transparent manner.²⁶ Among the reforms currently under discussion at the Legislative Assembly, the *depoliticisation* of the selection procedures of polling station staff (JRV) would add extra tasks to the TSE for it would take on the responsibility to identify, recruit and train the members of the JRVs in the relatively short timeframes provided for in the Electoral Code.²⁷

The TSE has been very active in social networks to disseminate the 2020-21 election calendar and, in an inclusive approach, has also organised several seminars on potential areas for electoral reform. The TSE has also shared with the Legislative Assembly, the JVE, political parties and civil society organisations the different technological options for the 2021 elections preliminary results transmission programme. (*See section on polling, counting, tabulation of results and election technology*)

5. Voter registration

(EU EOM 2018 recommendation 13; EU EOM 2019 recommendation 11)

In line with the findings and EU EOM recommendations, electoral stakeholders agreed that the voter register includes a number of deceased and disappeared persons whose status has not been regularly updated by the TSE. Although no accurate data is available, neither from the census nor from audit field surveys, EU EFM's interlocutors pointed out that the number of deceased and disappeared voters could be estimated at between 300,000 to 500,000.²⁸

Registered Voters ²⁹	2019 elections	31.10.2019
In-country	5,262,463	5,370,493
Out-of-country residents	350,638	406,744
Total	5,613,101	5,777,237

The TSE submitted to the Legislative Assembly a draft amendment to the Electoral Code reinforcing TSE powers to sanction municipal civil registries for failing to report deceases to the TSE. The draft also provided for fines to judges and court officials who do not report disenfranchisements based on convictions or on its termination. The proposal was passed on 31 October 2019 by the Legislative Assembly, which included the National Registry of Natural Persons (RNPN) officials among the recipients of the TSE sanctions.³⁰ The RNPN is in charge

²⁵ *Consortio Reformas Electorales*, September 2019 Report, recommendations #25.

²⁶ The Legislative Assembly approved on October 2019 to increase from 600 to 700 the maximum number of voters per polling stations. Decree 450.

²⁷ JEDs and JEMs are established four and three months before the election day. Article 99, Electoral Code.

²⁸ An estimated 6 to 10 per cent of the total registered voters in El Salvador. These figures be crossed-checked with the number of non-renewed ID cards (DUI).

²⁹ Source: TSE. Only 5,948 residents abroad applied for the out-of-country voting for the 2019 presidential election.

³⁰ Legislative Decree n°466/2019.

of the national register of citizens, from which the voter register is compiled, and the issuing of ID cards, the only accepted document for voter identification at the polling stations. After the reform was vetoed by president Bukele, the Electoral and Constitutional Reforms Commission coordinated with the RNPN and El Salvador Municipalities Corporation (COMURES) a new draft concerning the extension of deadlines for reporting updates on civil status to the TSE.

The EU EOMs recommendations on voter registration were far-reaching. The proposed reform aimed at guaranteeing more reliable updates to the register is a positive step forward but does not address other long-standing issues affecting the voter register in El Salvador such as the presence of deceased and disappeared voters and the mechanisms of communication between the different institutions involved: The TSE, the RNPN and the municipalities.

Out-of-country voting (OCV)

Since 2014, Salvadorans living abroad can vote in presidential elections. The specific need to ease the requirements in place and procedures for citizens living abroad to update their residence status was addressed by the EU EOM 2019.³¹ In this regard, the RNPN has opened offices in Australia, Italy and several US cities to allow out-of-country voters to update their residence status. All interlocutors, including the Government, members of the Legislative Assembly, the TSE and civil society organisations have expressed their interest to grant citizens living abroad the right to vote in legislative and municipal elections.

The Legislative Assembly ruled out on 25 September 2019 the out-of-country voting for the 2021 municipal elections.³² Deputies are currently discussing the challenges to the implementation of the OCV for next legislative elections, namely the allocation of voters to existing constituencies or the creation of a new one representing Salvadorans living abroad. The latter may require amending the Constitution.

6. Candidate registration

(EU EOM 2018 recommendations 14 and 15; EU EOM 2019 recommendations 12 and 13)

- Independent candidates in presidential and municipal elections

The significant role given to the political parties in El Salvador is deeply rooted to the Peace Agreement signed in 1992. The Constitutional Chamber offered in 2012 for the first time the possibility for independent candidates to run for legislative and municipal elections. Following an amendment to the Electoral Code, independent candidates may stand for legislative elections since 2015, while provisions for independent candidatures in municipal elections remains unaddressed. Since then, the first and only independent deputy to the Legislative Assembly was elected in the 2018 elections.

The 2012 Constitutional Chamber decision requires only an amendment to Electoral Code (art. 165) and therefore remains possible to be introduced in time for the 2021 elections. However, the possibility for independent candidates to run for the presidential election remains unaddressed as it requires a constitutional change, and it is not under discussion at the Legislative Assembly. The EU EOM recommendation on the right of independent candidates to appoint agents and to

³¹ In January 2012, the Legislative Assembly approved the Law for the Out-of-Country Voting, *Ley Especial para el Ejercicio del Voto desde el Exterior (Levex)*. The Law (art.4) provided for Salvadoran citizens residing outside El Salvador to effectively exercise their right to vote through postal ballots.

³² <https://www.elsalvador.com/noticias/voto-exterior-para-alcaldias-sera-hasta-2024/643156/2019/>

receive campaign financing advertisement slots in the public media has not been addressed. Such reform remains feasible with amendments to the Electoral Code.³³

The Legislative Assembly passed in April 2019 an amendment to the Electoral Code (Decree 295) to modify the counting procedures of the votes for independent candidates. For the purposes of counting and allocation of seats, all independent candidates in a constituency were treated as a list, with the seats being allocated in accordance to the number of votes each candidate obtained. After the reform, votes for each independent candidate will be counted individually. The new system may reduce the chances of independent candidates to be elected.³⁴

- Verification of candidate statements

The TSE has already planned to allocate adequate resources and new set of instructions and procedures for the verification of candidate declarations for the 2021 elections. The plan addresses partially EU EOMs recommendations 8 (2018) and 13 (2019) on the matter. The TSE is due to reinforce its jurisdictional department and to introduce an automatization system with the support of the UNDP Electoral Support Project. As a large number of candidates are envisaged for the legislative and municipal elections, the registration and verification of requirements, including the authenticity of declarations, will be one key phase of the 2021 electoral process.

7. *Media and elections*

(EU EOM 2018 recommendations 16 and 17; EU EOM 2019 recommendations 14 to 17)

The EU EOMs to El Salvador offered six recommendations aiming at improving the current media framework. EOMs identified several gaps in the legislation regarding the equitable access by contesting parties and candidates, independence of the public media outlets, media concentration and the lack of a Media Law and other provisions to effectively fight against violence and pressure against journalists. Finally, in the context where social media have taken an important role in the Salvadorian society, the 2019 EU EOM recommended monitoring disinformation to address fake news and smear campaigns.

Recommendations on the protection of journalists could be addressed through modifications to articles 181 and 339 of the 1997 Penal Code and article 15 of the 2013 Special Law on the Right to Rectification and Response. These articles are related to contempt, libel and defamation offences. Regarding the independence of the state-owned outlets, the 2019 EU EOM final report concluded that public TV and radio stations (TVES and RNES) favoured governmental views during their coverage of the presidential election campaign. Since 2013, a draft law on Public Media is under consideration by the Legislative Assembly but has been neither adopted, nor in the public discussion on reforms since the 2019 presidential election.³⁵ The implementation of a public media law would be a significant step forward to strengthening the role of state media as a public service.

As identified by the 2019 EU EOM, Community radios under the umbrella of the Association of Participative Radios (*Asociación de Radiodifusión Participativa de El Salvador, ARPAS*) continue to share one national frequency for the 22 associated radio stations throughout the

³³ Articles 121, 123, 124 and 128.

³⁴ <https://www.elsalvador.com/noticias/nacional/leonardo-bonilla-dice-es-un-acto-de-venganza-y-bajero/583239/2019/>

³⁵ The bill was submitted by the then FMLN Government in September 2013.

Source: <https://historico.elsalvador.com/historico/113556/crean-ley-para-regular-a-los-medios-publicos.html>

country.³⁶ In November 2018, ARPAS requested additional frequencies for their associated stations. The National Bureau of Electricity and Telecommunications (SIGET) reported to the EU EFM that there is no intention to modify the existing framework for community radios. In line with the EU EOM recommendations, ARPAS acknowledged the need to democratise the communication system, at a time of transition from analogical to digital broadcast, that SIGET plans to complete in the coming months. In addition, the 2016 reform to the Law on Telecommunications, recognising the role of the community radios and granting an exemption on the annual frequency tax, has not been fully implemented.

The EU EFM considers that no action has been taken so far to address EU EOM recommendations on media. Reforms under discussion by the Legislative Assembly do not tackle media issues. Moreover, civil society organisations have not suggested improvements on the media environment for elections, as they have focussed their recommendations on electoral, political financing and inclusiveness-related issues. As a positive step, some initiatives can be reported on fighting against fake news, as the UNDP has expressed readiness to support the TSE to fight disinformation and misinformation.

8. *Campaign finance*

(EU EOM 2018 recommendations 19 to 20; EU EOM 2019 recommendation 18)

Campaign expenses are financed by private and public funding. Public funding, as provided for in the Electoral Code, is based on the votes received by the parties in the last similar elections with specific provisions to advance funds to parties who did not participate in the previous elections.³⁷ The Political Party Law also sets mechanisms and limits to the reception of private funds.

- TSE's capacity to audit political finance

Amendments to existing provisions of the Electoral Code and the Political Party Law would be required in order to address the EU EOM recommendations 19 (2018) and 18 (2019) on auditing political finance. Both ARENA and FMLN informed the EU EFM about their readiness to undertake this reform. However, no draft amendment in this regard is under discussion at the Legislative Assembly.³⁸ Positively, the EU EFM noted TSE's willingness to improve and reinforce its capacities to monitor campaign expenditures through the creation of a specialised unit with dedicated staff and resources. NIMD and NDI have announced their intention to support the TSE in this regard.

Civil society organisations acknowledged TSE's limited capacity to audit funding and campaign expenses with the available resources. *Acción Ciudadana* have reported that political parties received 26 million dollars during the 2018 election campaign, 58 per cent from private donations and has recommended the TSE to strengthening capacities to monitor campaign expenses.³⁹ Their findings are in line with the EU EOMs recommendations on the matter. The Consortium for Electoral Reforms published eight proposals to reform the political financing system of El

³⁶ The TV communitarian network offers a national coverage which can be fragmented per territory.

³⁷ For the 2019 election, a value of USD 5,27 per vote received in the 2014 Presidential election and for the 2018 elections, a value of USD 2,62 per vote received during the 2015 Legislative and Municipal elections.

³⁸ One of the 10 pillars of the ECRC for electoral reforms concerns a review about the regulation the political parties' internal campaigns.

³⁹ *Acción Ciudadana*, 2018 Political Financing Report, December 2019: <https://www.diariocolatino.com/en-2018-partidos-politicos-recibieron-26-9-millones-para-financiamiento/>

Salvador. Two of these aimed at reinforcing TSE role and capacity to supervise political parties funding and expenses.⁴⁰

- Limitations on political advertisement

The EU EOM 2018 recommendation 20 suggested the introduction of limitations in spending and/or volume of political advertisements in the private media, especially during peak hours on radio and television. There was no indication from the Legislative Assembly to modify the existing system on political advertisement for candidates and political parties in the private media. Amendments to existing provisions of the Electoral Code and the Political Party Law should be adopted before the end of February 2020 in order to be in force for the 2021 elections.

9. *Political participation of women*

(EU EOM 2018 recommendation 21; EU EOM 2019 recommendation 19)

The EU EOMs recommended the promotion of effective measures for women to reach representation parity in all elected positions and higher bodies of the election administration. Since 2013, the Political Party Law compels political parties to comply with a minimum 30 per cent quota for the women candidates in all elections, except the presidential race. On 8 April 2019, the Legislative Assembly voted an amendment to the 2013 Provision for Independent Candidates requiring gender parity in independent candidates' tickets.⁴¹

Female Legislative Assembly deputies initiated at the end of 2018 discussions on gender parity in party lists with the support of UN Women, The Netherlands Institute for Multiparty Democracy (NIMD), the Hans Seidel Foundation, The National Democratic Institute (NDI), the International Republican Institute (IRI), Salvadoran civil society organisations and the TSE.⁴² On 9 December 2019 the Women Parliamentary Group submitted to the Legislative Assembly a draft bill to require parties and coalitions to make parity lists with gender alternation for the 2021 legislative municipal and PARLACEN elections. The draft bill does not envisage provisions for gender parity in the presidential election tickets. The proposed reform is in line with recommendations from Salvadoran civil society organisations.

The preferential vote system in place in El Salvador does not ensure that parity lists bring about equally parity Assembly. The number of principal female deputies has remained stable in the last two legislative periods with 27 and 26 female deputies in 2015 and 2018, respectively out of 84 principal seats.⁴³ Political parties expressed to the EU EFM their willingness to adhere to the gender parity criteria within their own structures and leaderships. The parties will conduct their internal elections of candidates between March and July 2020.⁴⁴

For the first time, the TSE is chaired by a woman.⁴⁵ The TSE president is the only female among the five principal magistrates. In addition, there are three female alternate magistrates, making a total of four out of the ten principal and alternate magistrates. The Legislative Assembly did not introduce gender quota requirements during selection and appointment of the TSE magistrates.

⁴⁰ *Consortio Reformas Electorales* - September 2019 Report: recommendations #9, 10, 11, 12, 13, 14, 15 and 16.

⁴¹ Legislative Decree 294. Independent candidates can only stand in legislative elections.

⁴² <https://www.laprensagrafica.com/opinion/Con-mujeres-si-20181114-0103.html>

⁴³ *Mujeres en la política salvadoreña*, TRACODA, 2018 <http://tracoda.info/informe-mujeres-en-la-politica-salvadorena>. "Las listas abiertas y el voto cruzado. Un análisis comparado entre las elecciones 2015-2018" FUSADES Publication, November 2019.

⁴⁴ Source: TSE 2021 Election Calendar.

⁴⁵ The first TSE female magistrate was elected in 2004.

Likewise, the TSE does not foresee gender parity in the composition of the departmental electoral boards (JEDs) municipal electoral boards (JEMs) and polling stations JRVs, as suggested by the EU EOM recommendations. However, the TSE has traditionally expressed its interests to address gender issues and it is considering, with the UNDP Electoral Support Project, to increase the political participation of women, and prevent violence against women in political life.

The proposed reform on gender parity, if approved by the Legislative Assembly before February 2020, will fully address EU EOMs recommendations on female representation parity in legislative and municipal elected positions. There remains the inclusion of gender parity in presidential election tickets and in the temporary electoral bodies of the TSE.

10. Political participation of indigenous peoples (EU EOM 2018 recommendation 22)

El Salvador legislation does not provide specific measures to increase the political participation of indigenous citizens, with the only exception of the “Municipal Ordinances” in six of the country’s 262 municipalities, which establish an indigenous representation as a first step to their participation in at least at municipality level. Despite continued economic, social and cultural discrimination of the indigenous population, no quota or affirmative action measures are foreseen by law. Contrary to the 2009 and 2012 elections, there was no indigenous observation of the last three elections.

Aiming to addressing the lack of effective political participation of El Salvador indigenous communities, the 2018 EU EOM suggested undertaking affirmative action to address their lack of inclusion in the political life and to promote their representation in elected institutions, such as the Legislative Assembly and municipal council. To date, no initiative has been undertaken, either at legislative or administrative levels to address the EU EOM recommendation.

11. Political participation of persons with disabilities (EU EOM 2019 recommendation 20)

The 2019 EU EOM recommended to remove existing limitations on the right to vote based on declarations of legal incompetence or unsound mind.⁴⁶ This restriction is inconsistent with provisions in the Convention on the Rights of Persons with Disabilities (CRPD).⁴⁷ The National Human Rights Ombudsperson Office acknowledged that removing disqualifications from voting based on mental disability may not be well understood and accepted by a significant number of Salvadorians. In fact, the issue is not included in the roadmap for electoral reform of the Legislative Assembly. Besides it would need a reform of the constitutional provisions on the right to vote. The 2019 EU EOM recommendation in this regard has not been addressed.

In last elections, the TSE has been very sensitive towards the inclusive participation of persons with disabilities and issued specific instructions on procedures for assisted voters. While there is

⁴⁶ Article 74 of the Constitution.

⁴⁷ The CRPD Committee’s interpretation of CRPD Articles 12 and 29 states that mental incapacity should not serve as a basis for the deprivation of the right to vote and to be elected, under any circumstances: “A person’s decision-making ability cannot be justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote.” Also, CRPD Committee, 2013, Zsolt Bujdosó and others v. Hungary.

no legal prohibition for persons with disabilities to work as poll workers, those selected in the last 2019 presidential election did not receive additional support to participate.

12. Political participation of the LGBTI community

(EU EOM 2018 recommendation 23 and EU EOM 2019 recommendation 22)

The EU EOMs recommended ensuring transgender and transsexual persons dignity and full exercise of their active and passive voting rights by allowing to legally change their names according to their chosen gender. While there has been progress in protecting the voting rights of the LGBTI community, there remain discrepancies between the name and the gender recorded on the ID card and the voter register, and the physical appearance and chosen gender identity of transsexual and transgender persons. To date, only a handful of transgender and transsexual citizens have had their gender identity recognized after individual court decisions.

A draft bill on Gender Identity, aiming to recognizing chosen gender and identity and to streamline procedures for name and gender changes at civil registries was introduced in the Legislative Assembly in March 2018 but discussions at commission level have only started few months ago.⁴⁸ The PDDH is monitoring the discussions and supporting LGBTI groups in El Salvador in this regard. Should the bill be adopted, transgender and transsexual voters would need to be issued a new ID card, within the time limits prescribed by the law, in order for the new identity be updated in the voter register. The EU EFM considers that some action is in place to address the recommendations offered by the EU EOMs.

13. Polling, counting, tabulation of results and election technology

(EU EOM 2018 recommendations 3, to 7, and EU EOM 2019 recommendations 6, 7 and 22)

The 2018 and 2019 EU EOMs formulated a total of six recommendations on strengthening the conduct of the election day through the reinforcement of the training of polling staff and the improvement of procedures on the validity of the ballot papers, the consistency in the tabulation process and the transmission and announcement of preliminary and final results. Additionally, two recommendations addressed the compliance to provisions on electoral silence, especially on election day.

- Polling staff and procedures

Training: Almost all EU EFM interlocutors agreed on the need for the TSE to have well-trained and non-partisan staff both at central and decentralised levels.⁴⁹ Likewise, the TSE is aware of the importance to reinforce the training component in the electoral process and have been supported by the UNDP during the last presidential election through the “virtual classroom” project (aula virtual), an online training course on election procedures for TSE permanent and temporary electoral bodies, JEDs, JEMs and JRVs staff. Both TSE and UNDP have expressed their interest to continue with this project for the 2021 elections.

Should parties be finally excluded from proposing members to the polling station commissions (JRVs) in the context of *depoliticisation*, the TSE would be in a better position to conduct

⁴⁸ <https://www.asamblea.gob.sv/node/8874>.

⁴⁹ *Consortio Reformas Electorales*, September 2019 Report, “*Estudio sistema electoral salvadoreño y agenda para una reforma integral*”: recommendation 22.

consistent JRV staff trainings with a special focus on polling and counting procedures envisaged for the 2021 legislative, municipal and PARLACEN elections. On the contrary, if the Legislative Assembly fails to adopt before the end of February 2020 the proposal on the *depoliticisation* of JRVs, previous challenges identified by the EU EOMs in El Salvador, such as the inconsistency of training instructions, are likely to persist in the next elections. If such scenario prevails, the EU EOM recommendations would likely not be addressed.

Ballot Paper Validity: In the context of the upcoming legislative and municipal elections with complex voting and counting procedures and where results by constituency can be decided with a relatively low number of votes, the ability to determine the validity of the ballots relies on a clear legal framework, effective training of polling station staff, and on civic/electoral education campaigns.⁵⁰ EU EFM interlocutors acknowledged the complexity of the process and the need to address the EU EOM recommendations by bringing existing provisions in the Electoral Code in line with the good international practice and through timely TSE regulations and consistent training instructions to JRV members. At this point of the election cycle there is no indication on any action taken to address the EU EOM recommendations.

Counting, tabulation and transmission of preliminary and final results: Significant time was needed for the polling staff to complete the counting of votes in 2018.⁵¹ For the 2021 elections, it is likely that the increase of the number of voters per polling stations from 600 to 700 approved by the Legislative Assembly and the possible reduction of number of polling staff will put the JRV members to strain, especially during the counting process.

Aiming to addressing the challenges identified by the EU EOM recommendations, the TSE is considering three technological options for the counting of votes, tabulation and transmission of preliminary and final results process. TSE's preferred choice entails the electronic tabulation of the votes at polling station level by specialised TSE staff. The second option would imply the use of optical-reading scanners for ballot papers at polling stations. The third option relies on the same tabulation and transmission of results system in place during the 2019 presidential elections. The TSE has foreseen 20 million dollars for the 2021 elections preliminary results programme. Depending on the funds that will be allocated to the TSE, the Tribunal should need to review and adapt its technological options.⁵²

- Respect of electoral silence periods

Political party's representatives acknowledged that Election Day in El Salvador is generally characterised by peaceful and joyful celebrations, regardless the deep-rooted disregard to campaign silence provisions. EU EFM interlocutors also agreed that all forms of propaganda should be prohibited in and around the polling centres, as well as political statements by candidates. However, no proposal has been made by the Legislative Assembly, the political parties or by the civil society organisations, aiming to reinforce adherence to legal provisions.⁵³ The TSE, as the highest authority on electoral matters, can address potential non-compliance

⁵⁰ FUSADES Report, November 2019: « *Las listas abiertas y el voto cruzado. Un análisis comparado entre las elecciones 2015-2018* »; the study showed that the number of null votes in legislative elections increased from 48,822 in 2015 to 191,155 in 2018 and in municipal elections from 32,769 in 2015 to 95,852 in 2018.

⁵¹ FUSADES Publication, November 2019: « *Las listas abiertas y el voto cruzado. Un análisis comparado entre las elecciones 2015-2018* »: 5.3 per cent of the polling stations ended the process in less than four hours; 28.8 per cent between four to six hours; 38.4 per cent between six and eight hours; 20.3 per cent between eight and 10 hours; and 7.3 per cent 10 hours the closing of the polling.

⁵² On 28 November 2019, the TSE submitted its budget to the Ministry of Finance. The Legislative Assembly is currently discussing the national budget for the next fiscal year.

⁵³ Articles n°177 and n°245 of the Electoral Code.

through its own regulations. In the absence of an amendment to the legal instruments, the TSE will remain in the position to seek an administrative and inclusive solution by brokering a Code of Conduct among political parties and candidates to effectively respond to instances of campaigning during the silence periods.

V. THE STAKEHOLDERS ROUNDTABLE

On 4 December 2019, the EU EFM organised in San Salvador the stakeholder roundtable, “The way forward for the implementation of the 2018 & 2019 EU EOM recommendations”. The main purpose of the roundtable was to serve as a forum for national interlocutors to exchange views on the challenges and implementation of EU EOM recommendations in view of the upcoming legislative, municipal and PARLACEN elections, scheduled for 28 February 2021.

The roundtable was chaired by the EU EFM Chief of Mission, Carlos Iturgaiz, the President of the TSE, Dora Esmeralda Martínez de Barahona and the EU Ambassador to El Salvador, Andreu Bassols, and attended by 35 participants representing the TSE, the Legislative Assembly, political parties (ARENA, FMLN, GANA, PCN, VAMOS, DS and *Nuestro Tiempo*), civil society organisations, international organisations, the EU Delegation and EU Member States.

The roundtable focused on EU EOMs priority recommendations and on those whose implementation was feasible during the months ahead to the 2021 elections. These were: reinforcing TSE institutional capacities, *depoliticisation* of the selection procedures of the polling station staff, more proportionality in the sanctions scheme for election offences, real gender parity in lists of candidates and enhanced mechanisms for the transmission of election results. In order to facilitate the discussion, recommendations were grouped in three thematic areas: “Challenges to the election administration”, “Challenges on Election Day” and “Towards election integrity”, covering around a third of the 45 recommendations offered by the 2018 and 2019 EU EOMs.⁵⁴ Participants were invited to discuss openly on the EU EOM recommendations, their feasibility and the opportunities for implementation ahead of the upcoming elections.

Participants agreed that time constraints for the implementation of meaningful reforms will remain a challenge, especially in the context of El Salvador’s three year legislative and municipal periods. Participants emphasised the importance to act in a strategic and inclusive manner.

There was a consensus on the professionalisation of the TSE structures and the *depoliticisation* of the selection process of the polling station staff, with opinions diverging about the timing for its introduction. The discussion also focused on the need for the TSE to be sufficiently resourced and financed in order to address the changes resulting from the reforms. With regards to election technology, there was a consensus about the need to reinforce the counting, tabulation and transmission of election results. However, some participants believed that the TSE should decide first how this process is going to be conducted before implementing any technological solution. Regardless of the technology chosen by the TSE, participants agreed on reinforcing training of polling and counting procedures, in a context of three simultaneous elections, larger polling stations and complex voting and counting procedures.

Roundtable participants agreed that some of the EU EOM recommendations on a reliable voter registry and the determination of the validity of the vote could be also addressed by the TSE

⁵⁴ See annex 2.1: Roundtable concept note and agenda.

without amending the Electoral Code. In this regard, participants identified two key factors for credible elections: the reinforcement of training of polling station staff on consistent procedures for voting and counting and the launching of a specific voter education campaign on the importance that the voter's intent should prevail, as provided for in the Electoral Code.

VI. CONCLUSIONS AND SHORT-TERM ACTIONS

The EU EFM conducted its activities with two main objectives. Firstly, assess the status of the implementation of the recommendations offered by the EU EOMs deployed to El Salvador to observe the 2018 legislative and municipal elections, and the 2019 presidential elections. Secondly, identify the recommendations that could still be implemented for the 2021 elections, either through modifications to existing legislation or through changes to administrative and operational procedures that the TSE could implement during the current electoral cycle.

As of December 2019, the EU EFM concluded that only two of the 2018 & 2019 EU EOMs recommendations, related to gender parity in the independent candidates' tickets, have been partially addressed. A total of 11 recommendations are at discussion phase; for 22, no action has been taken. There are 10 recommendations whose implementation is too early to be determined.

However, and despite the limited time since the taking office of the new government (June 2019) and appointment of new TSE magistrates (July 2019), the EU EFM noted that Legislative Assembly, political parties the TSE and civil society organisations have been very active in suggesting proposals for electoral reform. Several of them have been translated into amendments to existing legislation and will be applicable for the 2021 elections. Others are still under discussion and may also be implemented if adopted within the timeframe provided for in the law. While both the Legislative Assembly and the TSE have had an open and consultative approach to examine electoral reforms with interested stakeholders and civil society organisations, the EU EFM considers that it would be beneficial to address electoral reforms in a more strategic manner, focusing first on those that could have the greatest impact for the 2021 legislative, municipal and PARLACEN elections which will be highly challenging given their complexity (open list system with possibility of panachage).

The recommendations identified as achievable ahead of the 2021 elections may require action by the Legislative Assembly and the TSE. They are as follows:

- *Election Administration:* The TSE may reinforce its institutional capacities and communication among its different departments and temporary bodies by enforcing and abiding by the electoral calendar. The national budget under discussion at the Legislative Assembly should ensure that the TSE enjoys adequate resources to administer and organise credible and transparent elections in 2021, to which the *depoliticisation* of the selection and recruitment of the polling station staff, currently under discussion at the Legislative Assembly, could effectively contribute.⁵⁵ Ensuring the independence of the TSE through the approval and allocation of an adequate budget was part of the EU EOM recommendations and remains relevant and achievable.

⁵⁵ The 2020 national budget was approved on 12 December 2019. It included 18 million dollars for the ordinary functioning of the TSE. An extraordinary budget for the 2021 elections will be needed.

- *Voter Registration:* The TSE may conduct audits to the voter register to ensure the accuracy of the voter lists of the 2021 elections. The *depoliticisation* of the JRVs also implies that an accurate voter register is also needed for the TSE to recruit the members of the polling station commissions. The recent opening of RNPN offices in several overseas locations facilitates overseas residents to renew their ID cards and to update their residence status in the national registers.
- *Candidate registration:* The TSE may ensure that mechanisms, staff and resources are available to verify the declarations of the candidates. This may reduce grounds for appeals against decisions on registration, which are likely to occur in the context in the upcoming elections where a potentially large number of legislative and municipal candidates may stand. The EU EFM considers that such reform is achievable if political will exists.
- *Polling, counting, tabulation of results:* In the context of 2021 elections, where the outcome could be decided by a small number of votes, the TSE may need to reinforce the training of the polling staff and ensure that instructions are consistently delivered by all training facilitators. The “aula virtual” project developed with the support of the UNDP for the 2019 presidential elections can be a useful tool for poll workers to reinforce instructions received during in-person trainings. The TSE should publish regulations and deliver instructions to polling station staff on the counting procedures and clear criteria for the determination of the validity of the ballots, with respect to the voter’s intent. The Legislative Assembly should also contribute to this aim by clarifying related provisions in the Electoral Code and bring them in line with good international practice. The TSE may need to enforce existing legislation on electoral silence.
- *Transmission of results:* The TSE has experience in conducting legislative elections with an open-list panachage system. Regardless the technological options the TSE may choose for transmission of results, the EU EFM acknowledges the importance the TSE attaches to delivering timely and credible election results in a transparent and consultative approach and believes that recommendation on documenting all processes and components for the transmission of election results is achievable if instructions and process documentation to ensure quality control of the transmission programme is implemented in due time.
- *Campaign finance:* The TSE is committed to improve audit of campaign financing and plans to create a dedicated unit with adequate staff and resources to that aim.
- *Political participation of women:* The Legislative Assembly is currently discussing amendments to the Law on Political Parties to require gender parity and alternation in the legislative, municipal and PARLACEN party lists. The TSE, however, does not foresee to incorporate gender quota criteria in the recruitment and selection of members to the temporary electoral bodies.
- *Political participation of the LGBTI community:* if current discussions at the Legislative Assembly on the draft Law on Gender Identity succeed, transgender and transsexual citizens may achieve legal recognition of their chosen gender in time for the 2021 elections.

The high pace of the electoral calendar in El Salvador (legislative and municipal elections in March 2018, presidential elections in February 2019) and often overlapping legislative and presidential majorities do not help to reflect and agree on reforms that are needed for the long-

term. However, the EU EFM considers that it would be possible and valuable to adopt a more gradual approach for those reforms, for example by agreeing on transitional provisions allowing progressive implementation of reforms over the years. This would help disconnecting the electoral cycles and changing majorities from the much-needed discussions and agreements on the nature and the extent of long-term reforms.

VII. ANNEXES

Annex 1. Press release



Misión de seguimiento electoral de la Unión Europea

EL SALVADOR 2019

NOTA DE PRENSA

San Salvador, 4 de diciembre de 2019.

La Unión Europea (UE) ha enviado una misión de seguimiento electoral a El Salvador. Esta misión está encabezada por Carlos Iturgaiz, jefe de las misiones de observación electoral (MOE) que la UE desplegó en el país en 2018 y 2019 por invitación de las autoridades salvadoreñas.

El objetivo de la misión de seguimiento es evaluar el grado de implementación de las 45 recomendaciones que formularon las MOE UE de 2018 y 2019 y los progresos en la aplicación de reformas electorales. La misión se ha reunido con los poderes ejecutivo legislativo, el Tribunal Supremo Electoral, la Corte Suprema de Justicia, partidos políticos, sociedad civil, medios de comunicación y miembros del cuerpo diplomático.

El jefe de misión ha abierto hoy una mesa redonda a la que han sido invitados todos los interlocutores de la misión. Los participantes han tenido la oportunidad de discutir las recomendaciones de las MOE UE, así como otras propuestas existentes que podrían ser de aplicación para las elecciones legislativas, locales y al PARLACEN de febrero de 2021, teniendo en cuenta que la legislación salvadoreña no permite cambios en las reglas electorales durante el año inmediatamente anterior a una elección. Esta limitación, sin embargo, no afecta a reformas de índole reglamentaria.

Durante el transcurso de la misma, Carlos Iturgaiz ha señalado que: *“He tenido la oportunidad de comprobar el compromiso de los salvadoreños para avanzar en las reformas y la disposición de sus instituciones para escuchar propuestas. Todos son conscientes de la premura de tiempo y de la complejidad de las elecciones de 2021. Sin embargo, sería útil que el debate se llevase a cabo de forma estratégica e inclusiva. Me gustaría destacar también que, pese a los desafíos de 2021, aún no se han logrado implementar las reformas electorales tal y como esperábamos. Queda poco tiempo para que todos los partidos busquen consensos que les permitan avanzar en la agenda de reformas, en particular si éstas contemplan cambios de ley. Las instituciones responsables también pueden, a través de su capacidad reglamentaria, abordar asuntos que no requieren reforma legislativa. Creo que es todavía posible lograr avances que redunden en el beneficio de la ciudadanía.”*

Varias recomendaciones de la UE se están abordando de modo parcial; algunas, que siguen siendo pertinentes, bien necesitarían reformas constitucionales que aún no se han acometido; otras podrían emprenderse con cambios en la legislación o con modificaciones administrativas u operativas. De todas ellas, la misión ha priorizado aquellas que podrían estar en vigor para las próximas elecciones, si se abordan los cambios necesarios.

Estas recomendaciones prioritarias se refieren, entre otros temas, a una mayor proporcionalidad en las sanciones por infracciones al Código Electoral, el fortalecimiento de las capacidades institucionales del TSE, incluyendo la fiscalización de la financiación de campañas, la conclusión del proceso despolitización de los organismos temporales del TSE, la depuración del padrón, la paridad real de género en las listas de candidatos y la mejora de los procesos de escrutinio. Para ello sería necesario que el TSE dispusiera de los recursos adecuados.

La misión de seguimiento electoral publicará en las próximas semanas un informe sobre el grado de implementación de las recomendaciones de las MOE UE y los progresos en las reformas electorales.

Los informes finales de las misiones de observación electoral de la UE en El Salvador están disponibles en:

Informe final MOE UE 2018

https://eeas.europa.eu/election-observation-missions/eom-el-salvador-2018/44971/presentación-del-informe-final-de-la-moe-ue-el-salvador-2018_es

Informe final MOE UE 2019

https://eeas.europa.eu/election-observation-missions/eom-el-salvador-2019/60469/la-moe-ue-el-salvador-2019-presentó-su-informe-final_en

Annex 2. Roundtable concept note and agenda

EU Recommendations Roundtable
Moving forward: implementation of the EU EOMs recommendations
San Salvador, 4 December 2019
Hotel Barceló

Introduction

At the invitation of the authorities of the El Salvador, the EU deployed two Election Observation Missions (EU EOM) to El Salvador in 2018 and 2019 to provide a comprehensive, independent and impartial assessment of the 2018 legislative and municipal and the 2019 presidential elections as well as 45 recommendations identifying areas of improvement in the framework for elections. The follow-up to these recommendations is an important element of the EU continuous support to the consolidation of democracy. In this sense, an EU Electoral Follow-up Mission (EFM) headed by the former Chief Observer of both EU EOMs, Carlos Iturgaiz, was deployed to El Salvador between November and December 2019. The purpose of the EFM is to assess the degree to which the EU EOM 2018 and 2019 recommendations have been implemented and the progress made in electoral reforms.

I. Objectives

II.

The main purpose of the roundtable is to serve as a forum for national interlocutors to exchange views on the challenges and implementation of EU EOM recommendations in view of the upcoming PARLACEN, legislative and municipal elections, scheduled for 28 February 2021.

Methodology

The opening session will be conducted by the Chief of Mission and former Chief Observer of 2018 and 2019 EU EOMs, Mr. Carlos Iturgaiz, the President of the Supreme Electoral Court (TSE), Ms. Dora Martínez de Barahona, and the EU Ambassador to El Salvador, Mr. Andreu Bassols. Mr Iturgaiz will present the results of his consultations with stakeholders and the recommendations identified as more feasible and essential ahead of the 2021 elections. Ms. Martínez de Barahona will present TSE plans and priorities for the upcoming elections. Mr. Bassols will present the EU support to electoral processes in El Salvador.

Participants will be invited to discuss openly on several EU EOM recommendations, their feasibility and opportunities for implementation ahead of the February 2021 elections. In order to facilitate the discussion, recommendations have been grouped in three thematic areas: “Challenges to the election administration”, “Challenges on Election Day” and “Towards election integrity”.

Each of these thematic areas will cover topics identified by the EU EOMs in their recommendations as follows:

1. Challenges to the administration of the elections

- Depoliticisation of the TSE temporary structures:
“Continue to untie the TSE from partisan influence through the *depoliticisation* of its temporary structures and administrative units to ensure its neutrality and Independence” (EU EOM 2018 REC #8 and EU EOM 2019 REC #9).
- TSE financial independence and decision-making autonomy:
“Ensure TSE financial independence and decision-making autonomy by guaranteeing strict application of the Election Law. Set a clear timetable for the budget approval and guarantee adequate economic resources for key areas of the electoral process such as voter education, polling staff training, media regulation enforcement and results management technology” (EU EOM 2018 REC #11).
- An accurate voter register:
“Ensure a more accurate voter register by undertaking a comprehensive updating of the National Registry (RNPN), including easing existing requirements and procedures for citizens living abroad to update their residence status. (EU EOM 2018 REC #13 and EU EOM 2019 REC #11).

2. Challenges on Election Day

- Ballot validity determination:
“Establish clear provisions for determining the validity of the ballot, ensuring prevalence of the voter’s intention, and include comprehensive criteria of what constitutes a valid or invalid vote in order to avoid confusion and partisan interpretations” (EU EOM 2018 REC #4 and EU EOM 2019 REC #9).
- Counting, tabulation, transmission and publication of election results:
“Strengthen polling staff training on filling in results protocols and introduce further measures for basic consistency checks in results protocols - Enhance the consistency of the final results tabulation process by establishing clearer criteria for the review of results protocols, correction of errors and opening of ballot boxes - Document all processes and components of the system for transmission and tabulation of preliminary results and stakeholders to track information” (EU EOM 2018 REC #5-6 and EU EOM 2019 REC #22).

3. Towards election integrity

- Enforcement of election rules:
“Calibrate administrative and penal sanctions for electoral infractions and crimes in order to achieve a more effective electoral justice with sanctions that are dissuasive and proportional” (EU EOM 2018 REC #1 and EU EOM 2019 REC #1).
- Monitoring campaign expenditures:
“Improve the TSE’s capacity to fulfil its obligations to audit political financing, including internet advertising, and adopt adequate and proportional sanctions for non-compliance” (EU EOM 2018 REC #19 and EU EOM 2019 REC #18).

- Independence of public media:
“Disengage state media from direct government control and convert state media into genuine public service (EU EOM 2019 REC #15).
- More inclusive elections (Gender parity, participation of the LGBTI community, independent candidatures):
“Promote effective measures for women to reach representation parity in all elected positions o reach representation parity in political party structures and in higher bodies of the electoral administration” (EU EOM 2018 REC #21 EU EOM 2019 REC #19).

“Ensure transgender and transsexual people’s dignity and full exercise of their active and passive voting rights by allowing them to legally change their name according to their chosen gender” (EU EOM 2018 REC #23 EU EOM 2019 REC #21).

Allow independent candidates and citizen’s groups to present candidatures for municipal elections. (EU EOM 2018 REC #24).



Misión de seguimiento electoral de la Unión Europea
El SALVADOR 2019

MESA REDONDA
Avanzando en la implementación de las recomendaciones de
las misiones de observación electoral de la UE

San Salvador, 4 de diciembre de 2019
Hotel Barceló

AGENDA

08:15-08:30	Inscripción de participantes
08:30-08:45	Sesión de apertura <ul style="list-style-type: none"> - <i>Andreu Bassols, embajador de la Unión Europea en El Salvador</i> - <i>Dora Esmeralda Martínez de Barahona, presidenta del Tribunal Supremo Electoral</i> - <i>Carlos Iturgaiz, jefe de la misión de seguimiento electoral de la UE</i>
08:45 - 08:50	Objetivos de la mesa redonda
08:50-09:45	Los retos de la administración electoral <ul style="list-style-type: none"> - <i>Ciudadanización de las juntas receptoras de votos</i> - <i>Un TSE reforzado financiera y operativamente</i> - <i>Un padrón electoral riguroso</i>
09:45-10:00	Pausa-café
10:00-10:30	Los retos de la jornada electoral <ul style="list-style-type: none"> - <i>Determinación de la validez de los votos</i> - <i>Conteo, escrutinio y transmisión de resultados</i>
10:30-11:15	Unas elecciones más íntegras <ul style="list-style-type: none"> - <i>Capacidad sancionadora del TSE</i> - <i>Fiscalización de gastos de campaña</i> - <i>Hacia un proceso más inclusivo: paridad de género, comunidad LGTBI y candidaturas independientes.</i>
11:15-11:30	Conclusiones y cierre

Annex3. Matrix on the Implementation Status of the consolidated 2018 and 2019 EOM Recommendations

The EU EOM 2018 and 2019 proposed a total of 45 recommendations, 23 in 2018 and 22 in 2019. The EFM consolidated these recommendations into 32 and grouped them in 12 categories, namely: (I) Legal framework, (II) Right to vote, (III) Election administration, (IV) Voter registration, (V) Candidate registration, (VI) Media and elections, (VII) Campaign finance, (VIII) Political participation of women, (IX) Political participation of indigenous peoples, (X) Political participation of persons with disabilities (XI) Political participation of the LGBTI community (XII) Polling, counting, tabulation of results and election technology.

#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
I.	LEGAL FRAMEWORK			
1	2018 (1) 2019 (1)	Calibrate administrative and penal sanctions for electoral infractions and crimes in order to achieve a more effective electoral justice with sanctions that are dissuasive and proportional.	1	<ul style="list-style-type: none"> - There is no change regarding this proposal meanwhile it requires legal amendments in the Electoral Law and Penal Code. - The recommendation is supported by the majority of interlocutors. - The Electoral and Constitutional Reform Commission's roadmap includes the need to impose sanctions to the candidates in case of infractions. - The TSE can enforce compliance to the Electoral Code by issuing instructions and raising fines for non-compliance. - The TSE strategic plan (PLAGEL) foresees a reinforcement of its legal unit.
2	2018 (2) 2019 (2)	Introduce clear timeframes, deadlines and procedures to implement an efficient electoral justice including, for example, administrative mechanisms to process claims and appeals in a timely manner to lend legal certainty regarding candidacies.	1	<ul style="list-style-type: none"> - There is no change regarding this proposal, meanwhile it requires legal amendments in the Electoral Law. - The TSE supports the review and harmonisation of all electoral laws, including deadlines for the administration of electoral justice. - The TSE can enforce compliance to the Electoral Code by issuing instructions and raising fines for non-compliance.
3	2019 (3)	Set clear timeframes, deadlines and/or procedures to guarantee timely resolution of all electoral legal opinions and appeals by the Constitutional Chamber to give effects to rights (including right to participate in public affairs and	1	<ul style="list-style-type: none"> - There is no change regarding this proposal. The law on Constitutional Procedures was under discussion at early 2019.

		freedom of assembly) and ensure the right to an effective remedy.		
#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
II	RIGHT TO VOTE			
4	2019 (4)	Remove limitations on the right to vote based on subjective grounds, such as notoriously flawed conduct, and limitations affecting freedom of expression, such as advocating for the re-election of the president. Consider enfranchisement of convicted citizens; deprivation on the right to vote should pursue a legitimate aim, be objective and reasonable.	1	<ul style="list-style-type: none"> - There is currently is no public debate on this issue. It needs constitutional amendments. - The EFM is aware that such initiative would be unpopular, and believes that it should be addressed in the context of a global review of the both the Constitution and the Electoral Law taken into account of the intervention of two Legislatures to complete a change to the Constitution.
5	2019 (5)	The TSE should ensure that all registered voters can effectively exercise their right to vote, including those being held in detention awaiting trial.	5	<ul style="list-style-type: none"> - There is currently is no public debate on this issue. The EFM is aware that ensuring that pre-trial detainees can exercise their right to vote is unpopular. However, this recommendation also applies to all voters impeded to vote in person on E-Day, such as people in hospitals, those in elderly's houses. - The National Human Rights Ombudsperson Office (PDDH) acknowledged the pertinence to request to the TSE to allow for persons incarcerated pending conviction to vote. - The local CSO Consortium for Electoral Reforms (CRE) issued a similar recommendation regarding pre-trial detainees on September 2019.

#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
II	ELECTION ADMINISTRATION			
6	2018 (9) 2019 (9)	Continue to untie the TSE from partisan influence through the <i>depoliticisation</i> of its temporary structures and administrative units to ensure its neutrality and independence from the political parties.	2	<ul style="list-style-type: none"> - This recommendation is supported by political parties and civil society organisations. - There is currently a debate within the ECRC of the Legislative Assembly to remove political parties from proposing polling station staff: (i) ARENA, GANA, PCN, among others, are in favour of its implementation for the 2021 elections, (ii) FMLN remains in favour to wait the post-2021 period to implement such changes in order to have sufficient time for to accommodate the associated changes. May not be implemented for 2021 elections. - The TSE has not envisaged possible implementation of this reform in its 2020-21 strategic plan (PLAGEL) and in the budget submitted to the Ministry of Finances in 28.11.2019. - The administrative and operational impact for the TSE will be a challenge, both in terms of selection and training; the latter component due to be supported by the UNDP electoral assistance project. - CSO interlocutors made the proposal to train university students as polling station members.
7	2018 (10) 2019 (8)	In the context of a renewed political landscape, in order to safeguard TSE jurisdictional and administrative functions and foster confidence, initiate a debate involving the widest possible spectrum of stakeholders on a possible reform of TSE structure and/or composition.	2	<ul style="list-style-type: none"> - In line with the CREC <i>ad hoc</i> roadmap of the Legislative Assembly, ARENA submitted on 26.11.2019 a proposal. However, this proposal lacks support from all political parties such as FMLN considering that various options for a new Election Management Body (EMB) model could be taken into account for this reform prior to 2024 elections. - Many CSO showed an interest to learn from other regional contexts aiming to decide for the most adequate solution for El Salvador.
8	2018 (11)	Ensure TSE financial independence and decision-making autonomy by guaranteeing strict application of the Election Law. Set a clear timetable for the budget approval and guarantee adequate economic resources for key areas of the electoral process such as voter education, polling staff	2	<ul style="list-style-type: none"> - This recommendation emphasises the importance of guaranteeing an independent electoral authority, and is therefore contained in the ECRC's roadmap, and it receives the support of civil society organisations. - The TSE submitted an amendment of the Electoral Code (Art. 42 and 274) to ensure that TSE Budget's proposal is addressed to the Legislative

		training, media regulation enforcement and results management technology.		Assembly by the Ministry of Finances for State Budget's approval without modification.
9	2018 (12) 2019 (10)	Strengthen institutional capacities of the election management body by guaranteeing the necessary legal support and coherent and consistent communication between all levels of the TSE.	5	<ul style="list-style-type: none"> - This recommendation remains pending to the delivery of the TSE strategic plan (PLAGEL) based on the lessons learnt exercise from the 2018 and 2019 elections. - The TSE demonstrated a strong commitment to learn from the experiences of the last two elections, including receiving advises from the civil society organisations. - The UNDP Electoral Support of Project for the 2020-2021 period would support the TSE PLAGEL 2020-21.
IV. Voter Registration				
10	2018 (13) 2019 (11)	Ensure a more accurate voter register by undertaking a comprehensive updating of the National Registry (RNPN), including easing existing requirements and procedures for citizens living abroad to update their residence status.	2	<ul style="list-style-type: none"> - The Legislative Assembly passed the Decree n°466 imposing sanctions to Civil Register and RNPN officers and judiciary for lack of or late communication of changes to citizens' status. The President vetoed this decree on 19.11.2019. At the time of the EU EFM, discussions were ongoing to redraft the decree. - The main concerns about the quality of the voter list are: deceased, disappeared and migrated citizens (whose residence status is not updated). - Lack of resources at municipality level to update and communicate changes on civil status (Same as for information from hospitals and the judiciary). - Pending to any amendment, administrative measures need to be put in place to reinforce of the communication mechanisms between the different entities: municipalities, RNPN and the TSE. - Support initiatives for concertation between the Legislative Assembly, the TSE, the Election Oversight Board, (JVE), the RNPN, the Civil Registers and Municipality Association (COMURES), together with CSOs.

#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
V. Candidate Registration				
11	2018 (14)	Allow independent candidates and citizen's groups to submit candidatures for municipal elections.	1	- There is neither change nor indication to modify existing or/and adopt provisions to address this recommendation.
12	2019 (12)	Allowing independent presidential candidates	1	- Political parties are against this recommendation, and there is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new one. - It could be addressed in the context of a global review of the Constitution, the Electoral Code and the Law on Political Parties.
13	2018 (8) 2019 (13)	Introduce mechanisms to allow the TSE to verify the authenticity of declarations within the legal registration period for candidates.	2	- The implementation of this recommendation would contribute to significantly improve the legal security of candidacies. - These mechanisms should be introduced in the TSE PLAGEL with adequate resources, and with newly sets of instructions and procedures. There is an on-going discussion between the TSE and NDI/NIMD associated to CSOs to support the TSE based on best practice in the region.
14	2018 (15)	Provide independent candidates the right to appoint agents and to receive campaign financing and advertising slots in the public media.	1	- The first independent candidate in an election in El Salvador was during the 2018 legislative elections. - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new one.
VI. Media & Elections				
15	2018 (16)	Consider extending the five-day free airtime period for political parties in the public media to improve opportunities for participants to socialise their political platforms, and consider to allow independent candidates to also benefit from free airtime.	1	- There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new one.

#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
16	2018 (17)	Ensure freedom of expression is duly protected by effectively prosecuting violence and pressure against journalists and media, and amend media law to ensure it does not limit independent or investigative journalism	1	<ul style="list-style-type: none"> - A draft law on protection for journalists was under reviewed in 2018. - The protection of journalists could be addressed through modifications to articles 181 and 339 pf the 1997 Penal Code and article 15 of the 2013 Special Law on the Right to Rectification and Response.
17	2018 (18)	Regulate institutional advertisement attribution mechanisms to ensure a more equal distribution of government publicity.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation.
18	2019 (14)	Strengthen the legal framework by regulating journalism and media, including provisions on equitable access for parties and candidates to the media and media objectivity and impartiality in coverage of electoral processes.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation.
19	2019 (15)	Disengage state media from direct government control and convert state media into genuine public service broadcasters with editorial independence.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation.
20	2019 (16)	Strengthen fact-checking collective knowledge and monitoring capacity of disinformation in order to minimise dissemination of fake news and smear campaigning.	5	<ul style="list-style-type: none"> - The TSE has indicated its intention to monitor the fake news (social media) development during the electable cycle. - Community radios expressed also an interest to develop programs on this matter in line with its mission consisting, among others, to build for a democratic society.
21	2019 (17)	Minimise concentration of media by allocating specific licences and radio frequencies to community radio stations.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation. - The Radios and Participative Programs Association (ARPAS) continues to have access to a single frequency.

#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
VII.	Campaign Finance			
22	2018 (19) 2019 (18)	Improve the TSE's capacity to fulfil its obligations to audit political financing, including internet advertising, and adopt adequate and proportional sanctions for non-compliance.	5	<ul style="list-style-type: none"> - Regardless the reinforcement of the related provision in the Electoral Code, the TSE recognised it needs to establish a dedicated unit to effectively audit political finance with the creation of a dedicated unit with dedicated staff (refer to TSE PLAGEL). - NDI & NIMD with the support of CSOs are reviewing options of assistance to this TSE unit.
23	2018 (20)	Introduce limitations in spending and/or volume of political advertisements for candidates and political parties in the private media, especially during peak hours on radio and television.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation.
VIII.	Political participation of women			
24	2018 (21) 2019 (19)	Promote effective measures for women to reach representation parity in all elected positions by, for example, introducing quotas to reach representation parity in political party structures and in higher bodies of the electoral administration (e.g. Supreme Electoral Court, Departmental Electoral Boards, Municipal Electoral Boards).	3	<ul style="list-style-type: none"> - The Legislative Assembly adopted on 10.04.2019 decree 294 amending regulation on non-partisan candidates requiring gender parity tickets for legislative elections. - On 9.12.2019, the Women Parliamentary Group of the Legislative Assembly submitted a proposal to raise the minimum gender quota in candidate lists from 30 per cent to 50 per cent; a proposal due to guarantee gender parity and alternation in the party lists (on both primary and alternate candidates). - To date, the TSE doesn't foresee to incorporate gender quota in the selection of the temporary electoral bodies (JEDs and JEMs). - There are experienced-CSOs in El Salvador targeting women in politics interested to monitor violence against women candidates, and women empowerment in politics.
IX.	Political participation of indigenous peoples			
25	2018 (22)	Undertake affirmative action to address the lack of inclusion of indigenous peoples in the country's political	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation.

		life and ensure and facilitate the exercise of their political rights, especially to promote indigenous representation.		- Only six out of 262 municipalities provide “Municipal Ordinances” to increase the political participation of indigenous citizens.
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#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
X.	Political participation of persons with disabilities			
26	2019 (20)	Remove limitations on the right to vote based on declaration of legal incompetence or unsound mind.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation. - The National Human Rights Ombudsperson Office (PDDH) acknowledged that removing disqualifications based on mental disability may not be well accepted in the context of El Salvador. - There are experienced-CSO engaged with persons with disabilities (PwD) in the capacity to raise awareness and to facilitate political dialogue on existing international obligations.
XI.	Political participation of the LGBTI community			
27	2018 (23) - 2019 (21)	Ensure transgender and transsexual people’s dignity and full exercise of their active and passive voting rights by allowing them to legally change their name according to their chosen gender.	2	<ul style="list-style-type: none"> - There is a draft bill submitted in 2018 currently under discussion at the Legislative Assembly. - In 2019, the President of the ECRC invited CSOs to present recommendations to improve the rights of the LGBTI community among other groups. - The PDDH is monitoring the discussions and supporting LGBTI groups in this regard.
XII.	Polling, Counting, tabulation of results and election technology			
28	2018 (3)	Strengthen polling staff training to empower them as the authority in charge of conducting the electoral process at polling station level, free from partisan interference.	5	<ul style="list-style-type: none"> - The TSE Training Department is due to receive a follow-up from last two elections of the UNDP Electoral Support Project targeting reinforcement in training solutions. - The Legislative Assembly approved on 24.11.2019 the decree N°450 increasing the number of voters per polling station from 600 to 700. Such mechanism implies additional workload to the polling station staff during polling and counting.

#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
XII.	Polling, Counting, tabulation of results and election technology			
29	2018 (4) 2019 (6)	Establish clear provisions for determining the validity of the ballot, ensuring prevalence of the voter's intention, and include comprehensive criteria of what constitutes a valid or invalid vote in order to avoid confusion and partisan interpretations.	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation. - An amendment of the Electoral Code by consensus would represent an inclusive effort due to have a positive and practical impact in the counting process. By a reinforcement of administrative procedures, the TSE can also bring significant improvement in this process. - With existing and foreseeable UNDP support; the TSE would reinforce both training (consistency), and voter education campaign of voting procedures. - A support to the TSE and CSOs aiming to reinforce voter education campaigns would represent a significant component to be included in the planning.
30	2018 (5, 6)	<p>Strengthen polling staff training on filling in results protocols and introduce further measures for basic consistency checks in results protocols content before they leave the polling centre.</p> <p>Enhance the consistency of the final results tabulation process by establishing clearer criteria for the review of results protocols, correction of errors and opening of ballot boxes</p>	5	<ul style="list-style-type: none"> - The TSE has submitted three proposals for the automatization of counting, tabulation and transmission of poll results (PLAGEL/Budget 2020-21 to the Ministry of Finances) on 28.11.2019. - The reinforcement of the TSE is due to receive a follow-up of the UNDP Electoral Support Project targeting training solutions. - In the context of the introduction of the “depoliticised” polling staff, and thus selecting mainly new staff, this aspect will take an even more important dimension than in previous elections.
31	2018 (7) 2019 (7)	<p>Forbid all forms of canvassing and particularly the use of campaign material inside voting centres, such as distinctive clothing.</p> <p>Ensure respect for the campaign silence period by enforcing existing legislation that prohibits all forms of canvassing and particularly the use of campaign material inside voting</p>	1	<ul style="list-style-type: none"> - There is neither change with regards to this recommendation, nor an indication to modify existing or/and adopt new legislation. - The political parties admit breaking the campaign silence and appear to willingly comply with it as long as others do it as well. - The TSE is aware parties and candidates do not comply with the campaign silence period (before and after the campaign). In the scenario if no new legal instruments can't be introduced on time, the TSE with

		centres and statements by political leaders through media outlets.		the support of additional electoral stakeholders such as civil society groups can seek for the adoption of a “Code of Conduct”.
#	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-5	Comments
XII.	Polling, Counting, tabulation of results and election technology			
32	2019 (22)	Document (for example, through a manual of procedures) all processes and components of the system for transmission and tabulation of preliminary results to ensure quality control in data processing and allow system users and stakeholders to track information relating to the different stages and activities.	5	<ul style="list-style-type: none"> - The TSE has submitted three proposals for the automatization of counting, tabulation and transmission of poll results (PLAGEL and Budget 2020-21 to the Ministry of Finances) on 28.11.2019. - Regardless of the solutions, TSE informed the EFM that their plan is to follow the EU EOM recommendations in providing specific and adequate training manuals when conducting training sessions.

Category	Description	Implementation Status
1	No change	22
2	Action or activity is ongoing but implementation of the recommendation has not yet been confirmed	11
3	Partial implementation of recommendation	2
4	Full implementation of recommendation	0
5	Too early in electoral cycle to determine	10
6	Recommendation is no longer relevant	0

This matrix provides an overview of the status of implementation of the consolidated 2018 and 2019 EU EOM recommendations for easier reference by relevant authorities and stakeholders. The matrix indicates the level of implementation as assessed by the EFM and should be read in conjunction with the narrative of the report for more detailed feedback.

