



European Union
Election Follow-up Mission

EL SALVADOR 2021

Final Report



November 2021



El Salvador

FINAL REPORT

13 November 2021

**EUROPEAN UNION
ELECTION FOLLOW-UP MISSION**

The European Union 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.

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY	1
2. MISSION INFORMATION	2
3. CONTEXT	3
3.1 Political Context	3
3.2 Election-Related Developments.....	4
3.3. Institutional Context	6
4. IMPLEMENTATION STATUS OF EU EOM RECOMENDATIONS.....	8
4.1. Legal Framework.....	10
4.2. Right to Vote	10
4.3. Election Administration.....	11
4.4. Voter Registration	12
4.5. Candidate Registration.....	13
4.6. Media and Elections.....	13
4.7. Campaign Finance.....	16
4.8. Political Participation of Women	17
4.9. Political Participation of Indigenous Peoples	17
4.10. Political Participation of Persons with Disabilities	18
4.11. Political Participation of the LGBTI Community.....	18
4.12. Polling, Counting, Tabulation of Results and Election Technology	18
5. THE STAKEHOLDER ROUNDTABLE.....	19
6. CONCLUSIONS.....	20
7. ANNEXES	22
ANNEX I: PRESS RELEASE	22
ANNEX II: ROUNDTABLE AGENDA.....	23
ANNEX III: MATRIX ON THE IMPLEMENTATION STATUS OF THE 2018 AND 2019 EU EOM RECOMMENDATIONS	24

ACRONYMS

APES	El Salvador Journalists Association (<i>Asociación de Periodistas de El Salvador</i>)
ARENA	Nationalist Republican Alliance (<i>Alianza Republicana Nacionalista</i>)
ARPAS	El Salvador Participative Radio Broadcasting Association (<i>Asociación de Radiodifusión Participativa de El Salvador</i>)
CIDH	Inter-American Commission on Human Rights (<i>Comisión Interamericana de Derechos Humanos</i>)
CONAB	National Council for Goods Management (<i>Consejo Nacional de Administración de Bienes</i>)
CONAIPD	National Council for Persons with Disabilities (<i>Consejo Nacional de Atención Integral a la Persona con discapacidad</i>)
CREC	Legislative Assembly Commission on Electoral and Constitutional Reform (<i>Comisión para la Reforma Electoral y Constitucional de la Asamblea Legislativa</i>)
DUI	National Identity Card (<i>Documento Único de Identidad</i>)
EU EFM	European Union Election Follow-Up Mission
EU EOM	European Union Election Observation Mission
FMLN	Farabundo Martí National Liberation (<i>Frente Farabundo Martí para la Liberación Nacional</i>)
GAN	Grand Alliance for National Unity (<i>Gran Alianza por la Unidad Nacional</i>)
IAIP	Institute for Access to Public Information (<i>Instituto para el Acceso a la Información Pública</i>)
JRV	Polling Station (<i>Junta Receptora de Votos</i>)
JVE	Electoral Oversight Board (<i>Junta de Vigilancia Electoral</i>)
LEIV	Special Law for an Integral Life Free from Violence for Women (<i>Ley Especial para una Vida Integral Libre de Violencia para las Mujeres</i>)
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LTO	Long Term Observer
NDI	National Democratic Institute
NGO	Non-Governmental Organisation
PCN	Party of National Concertation (<i>Partido de Concertación Nacional</i>)
PDC	Christian Democratic Party (<i>Partido Demócrata Cristiano</i>)
RNPN	National Civil Registry (<i>Registro Nacional de Personas Naturales</i>)
TSE	Supreme Electoral Court (<i>Tribunal Supremo Electoral</i>)
UNDP	United Nations Development Programme

1. Executive Summary

A European Union Election Follow-up Mission (EU EFM) was deployed to El Salvador to assess the degree of implementation of the recommendations offered by the 2018 and 2019 European Union Election Observation Missions (EU EOM) and to enquire about recent electoral reforms. The Mission was led by Gabriel Mato, Member of the European Parliament. The Mission met with the President, Vice-President, Ministry of Foreign Affairs, Legislative Assembly, Supreme Electoral Tribunal (TSE), Electoral Oversight Board (JVE), Human Rights Ombudsperson, political parties, media, civil society, technical assistance providers, and the diplomatic community.

The EU EFM took place two years after the inauguration of President Bukele, who has since enjoyed broad public support. Interlocutors highlighted the handling of the pandemic, the fight to improve security conditions, and government policies which have been viewed as contributing to address corruption. On the other hand, the first two years of Bukele's mandate were also characterised by disagreement between the Executive and the Legislative Assembly, where his party had no seat. There were also tensions with other state institutions, including the Constitutional Chamber of the Supreme Court, the Public Prosecutor, and the Human Rights Ombudsperson.

The 2021 legislative election resulted in a landslide victory of Bukele's party, *Nuevas Ideas*, which obtained a qualified majority, allowing it to undertake specific reforms. Among the first decisions of the new Legislative Assembly were the replacement of Constitutional Chamber magistrates, and the forced retirement of a large number of the country's judges and public prosecutors. Stakeholders considered these events contributed to diminishing the independence of these institutions, undermining the rule of law and the separation of powers in El Salvador. An early decision of the newly-appointed Constitutional Chamber was to permit consecutive presidential re-election which generated public controversy.

Some progress was made to address EU EOM recommendations, with 8 of the 32 recommendations fully or partially implemented. The three fully implemented recommendations were in relation to streamlining the counting, transmission and tabulation of results processes through improved training and the introduction of election technologies. Five recommendations were partially addressed through active measures for the political participation of women and LGBTI candidates, freeing polling staff from partisan interference, initiating debate on the TSE structure, as well as the possibility to field independent candidates for municipal elections.

Regarding the recommendations relating to media, interlocutors considered that there had been a recent backsliding in aspects related to the freedoms of expression and press, combined with an increase in online hate speech and disinformation. More specifically, a deterioration in working conditions for independent and investigative journalists, harassment and smear campaigns against independent outlets limited access to information, and the withholding of state advertising in private media. Interlocutors reported that in some instances the government directly intervened, and in others the government neither reacted to nor condemned attacks against journalists.

Interlocutors highlighted the positive technical and administrative preparations in the 2021 polls, which included, in line with EU EOM recommendations, improvements in the counting and tabulation of results. Notwithstanding, there were criticisms regarding the electoral authority's independence with respect to decision-making on politically sensitive issues. Regarding the TSE's institutionalism and its role as the ultimate arbiter in electoral issues, it is noteworthy that the electoral authority was not consulted on a new law regarding out-of-country voting nor on the Executive's proposed constitutional reforms relating to the electoral framework.

The EU EFM noted that civil society organisations, political parties and the TSE have been active in suggesting proposals for electoral reform. The previous Legislative Assembly studied various electoral reforms, and some of these resulted in amendments to legislation that was applicable for the 2021 elections. However, only one of the EU EOM recommendations requiring legal change was partially implemented, this was in relation to independent municipal candidates. The current Electoral and Constitutional Reforms Commission initiated its work by archiving all the previous proposals for electoral reform. The Commission has so far concentrated all its efforts on the adoption of the popularly-demanded *Ley Especial para Sufragio en el Extranjero*, which was welcomed by Salvadorans.

The EU EFM organised a stakeholder roundtable to discuss the challenges and opportunities for electoral reform. Stakeholders emphasised that organisation of the 2024 general elections will be highly challenging given their complexity. There was broad consensus that there is an urgent need to undertake electoral reforms. The EU EFM maintains the priority recommendations established by previous missions, which generally coincide with those identified by interlocutors, including the need for improved supervision over political financing, depoliticisation of electoral staff, and enforcement and bolstering of campaign and media rules. Interlocutors also signalled the need to develop the *Ley Especial para Sufragio en el Extranjero*, with all the guarantees to ensure that out-of-country suffrage is conducted in a credible manner.

Interlocutors agreed that the Legislative Assembly urgently needs to establish a work agenda, with a view to amend the electoral framework within the timeframe provided by law for an effective implementation ahead of the 2024 polls. The EU EFM considers that it would be beneficial to address electoral reforms in a strategic manner, focusing first on those that could have the greatest impact on the 2024 polls. For successful preparations and conduct of the 2024 polls, it is critically important that the TSE receives adequate and timely annual and election-year budgets.

Both the Legislative Assembly and the TSE need to engage in a consultative approach to examine electoral reforms with a wide range of interested stakeholders, maintaining a climate of dialogue and tolerance. The reform process must be guided by the need to protect the rights of Salvadorans, guaranteeing the independence of those who have the responsibility for protecting these rights. It should also be carried out within the context of legal certainty, as this is the pillar which sustains credibility with respect to institutional actions and ultimately citizens' confidence.

2. MISSION INFORMATION

As an important element of the European Union's continuous support to the consolidation of democracy, an EU Election Follow-up Mission (EU EFM) was deployed to El Salvador from 11 October to 7 November to assess the degree to which the recommendations of the 2018 and 2019 EU Election Observation Missions (EU EOMs) had been implemented and the progress made on electoral reforms since the last presidential election. At the invitation of the Government of El Salvador and the Supreme Electoral Tribunal (TSE), the EU EOMs were deployed to provide a comprehensive, independent and impartial assessment of the electoral processes and formulated a combined total 32 recommendations identifying areas of improvement.

The EU EFM was led by Gabriel Mato, Member of the European Parliament, and included two representatives of the European External Action Service and two election experts. The Mission met with the President, Vice-President, Minister of Foreign Affairs, Legislative Assembly, Supreme Electoral Tribunal (TSE), Electoral Oversight Board (JVE), Human Rights Ombudsperson, political parties, media, civil society, technical assistance providers, and the diplomatic community.

3. CONTEXT

3.1 Political Context

The victory of Nayib Bukele in the 2019 presidential elections resulted in a new political landscape. The traditional parties, ARENA and FMLN, lost their 27-year hegemony over the political system. Bukele ran on an anti-corruption platform in which he promised to rid the country of the crooked practices of the past and find a new way of doing politics.

Bukele's popularity and that of his administration has remained high since coming to office.¹ Interlocutors claimed that his handling of the pandemic garnered wide public support, as did his fight to improve security conditions. His government policies have been viewed as contributing to addressing corruption. Opinion polls also pointed to the electorate's rejection of traditional parties. Converting El Salvador into the first country in the world to adopt Bitcoin as legal tender attracted international attention, and critics raised questions about the economic impact. Stakeholders pointed to a narrowing of space for dialogue as various government secretariats were eliminated, including that for transparency and corruption, citizens participation, and social inclusion.

The first two years of Bukele's mandate were characterised by disagreement between the Executive and the Legislative Assembly, where his party had no seats. In February 2020, President Bukele entered the Legislative Assembly accompanied by 40 soldiers and civil national police with the aim to force approval of a loan for his national security plan. The Inter-American Commission on Human Rights reacted demanding that El Salvador finds a peaceful solution to the crisis with respect for the separation of powers. There were also parallel tensions between the Executive and other state institutions, including the Constitutional Chamber of the Supreme Court, the Public Prosecutor, and the Human Rights Ombudsperson. The 2021 legislative election resulted in a landslide victory of Bukele's party, *Nuevas Ideas*, which obtained a qualified majority, that which is necessary, *inter alia*, to undertake specific reforms and appoint the holders of key state institutions.

There appears to have been a recent backsliding in the freedoms of expression and press. Interlocutors expressed that the media sector had not fared well during the current administration, with a deterioration in working conditions for many journalists. The Inter-American Commission on Human Rights issued precautionary measures to protect journalists from a popular media outlet who were victims of systematic threats.² Interlocutors reported that the government neither condemned nor reacted to these attacks. Furthermore, stakeholders reported that the state institution responsible for access to public information lost much independence.

More recently, national and international stakeholders raised concerns regarding events that have contributed to weaken institutionalism and diminish the independence of state institutions, particularly the judiciary. This became palpable when, in its first session on 1 May 2021, the Legislative Assembly replaced the five magistrates of the Constitutional Chamber (the Chamber ruled against this decision, before one by one each magistrate was obliged to resign) and the Public Prosecutor. The Human Rights Ombudsperson issued a statement qualifying the process to dismiss the magistrates and Public Prosecutor as an alteration in the constitutional order. Replacements were not undertaken in line with established procedures or according to the list of judges provided by the judiciary and lawyers associations. Replacement of the magistrates generated a strong reaction from the international community, including the European Union, and raised serious concerns about the rule of law and separation of powers. The United Nations High Commissioner

¹ Central American University's Institute of Public Opinion.

² Inter-American Human Rights Commission Resolution 12/2021.

on Human Rights categorised these moves as seriously undermining democracy and the rule of law in El Salvador.

Furthermore, on 31 August, the Legislative Assembly passed amendments to the *Ley de Carrera Judicial* and the *Ley Orgánica de la Fiscalía General*. Amendments limited the exercise of judicial and public prosecutor functions to 30 years and established mandatory retirement at 60 years of age. This decision affected one-third of the country's 690 judges and dozens of public prosecutors from all levels of the judiciary. These amendments were categorised by national and international actors as a strike against judicial independence and the separation of powers. One of the first and highly controversial decisions of the newly-appointed Constitutional Chamber (September 2021) was to permit consecutive presidential re-election, despite the fact that the Constitution establishes that the provision on re-election is unamendable.

A constitutional reform package elaborated by Vice-President Ulloa, upon petition of the President, was publicly presented on 15 September 2021. The reform package was the subject of criticism by broad sections of society, as it emanated from the Executive and not the Legislative Assembly, and was not the result of a wide political, social, and economic pact. Many questioned the legitimacy and legality of the proposals. Despite the president's high popularity, September and October 2021 witnessed significant public protests against, *inter alia*, government policies, shortfalls in transparency, proposed constitutional reforms, and the decision on consecutive re-election.

3.2 Election-Related Developments

Election Reform Initiatives

The Electoral and Constitutional Reforms Commission of the Legislative Assembly (2018-2021), agreed on a ten-point roadmap for electoral reform in July 2019. These comprised the review of the separation of TSE functions and the preferential voting system, a new seat allocation system for independent candidates, access to public information, protection of journalists, provisions for out-of-country voting in legislative and municipal elections, the synchronisation of the electoral periods, the modification of existing election campaign provisions on the use of party colours on election day, as well as the introduction of technological solutions for the tabulation and transmission of results. The Commission also analysed the separation of the TSE's jurisdictional and administrative functions, which would require a constitutional reform.

The Commission discussed other reforms initially not foreseen in the roadmap, such as the exclusion of political parties from the process of proposing poll workers (the so-called depoliticisation of polling stations) and legal provisions for gender parity and alternation in candidate lists. Other electoral reform initiatives submitted by TSE and civil society organisations, such as the financial independence of the TSE, were not considered by the Commission. In addition, a new law on Constitutional Procedures was under discussion in early 2019 to improve the timeliness of judicial appeals. The arrival of the COVID-19 pandemic stalled discussion on some initiatives.

Based on Commission proposals, the Legislative Assembly approved several reforms to the Electoral Law, including increasing the maximum number of voters per polling station, a new seat allocation system for independent candidates, facilitating voting for some groups (voters over 55, pregnant women, and persons with disabilities), and gender parity in legislative independent candidates' tickets. The latter partially addressed recommendations of the EU EOMs. Two reforms were vetoed by president Bukele: sanctions to judges, civil servants, and National Registry of Natural Persons (RNPN) officials who failed to report disqualified and deceased voters, and the

inclusion of mayoral candidates' photos on the ballot papers. This latter veto was overruled by the Legislative Assembly in December 2019.

In 2020, the Legislative Assembly also passed a law extending to Salvadorans living abroad the right to vote in legislative, municipal, and PARLACEN elections (since 2014 Salvadorans living abroad could vote in presidential elections). This law was subsequently vetoed by President Bukele as it did not regulate passive voting rights, voting procedures, or voting conditions for naturalised Salvadorans. A subsequent ruling of the Constitutional Chamber resolved this conflict between the Executive and the Legislative Assembly, siding with the legislature in all but the issue relating to the non-inclusion of passive voting rights. In September 2021, the Legislative Assembly passed a law for both passive and active voting rights for Salvadorans living abroad.

While some legal reforms were introduced in the interim period since the 2019 polls, the Legislative Assembly has yet to tackle fundamental and long-demanded reforms on strategic and fundamental issues, as recommended by the EU EOMs and civil society organisations.

Proposal for Constitutional Reform

On 15 September 2021, a constitutional reform study was publicly presented. This was the result of a presidential mandate given to Vice-President Ulloa in August 2020. Given the extension of the proposal, it was labelled by many as a new Constitution, with reforms to 215 of the 274 articles. The government labelled the project as a historical Constitution that provides the most extensive protection of rights.

The reform package includes proposals to enshrine in the constitution some long-standing citizens' demands for fundamental human rights, including the right to water and adequate sanitation. Other proposals touched on electoral issues, including mechanisms for citizen participation (referenda, recalls), increased rights for independent presidential candidates, an extension of presidential terms (from 5 to 6 years), restructuring of the electoral authority (separating the functions into administrative and judicial institutions), lessening of education requirements for candidates, and the creation of a TSE unit to supervise political financing. Some of these proposals are in line with EU EOM recommendations.

There is broad consensus among stakeholders that the proposal drafting process was undertaken without meaningful stakeholder consultation, and that in defiance of the rule of law it emanated from the Executive rather than the Legislative Assembly. Stakeholders questioned the need to undertake this reform given that some of the proposals, *inter alia*, the right to access public information, data protection, and independent candidatures were already addressed by constitutional jurisprudence and also through secondary laws. Other proposals could be introduced through new secondary legislation within the existing constitutional framework.

Interlocutors indicated that the reform proposals also touched upon unamendable fundamental principles, such as the existence of a one-party state being incompatible with the form of government, the extension of and alternation of presidential mandates, and the very procedures for undertaking constitutional reform. Constitutional experts were of the opinion that fundamental principles should not be amended in the absence of a Constituent Assembly.

Various proposals that touched on the freedom of expression and of the press were criticised, including the obligation to collaborate with the state in the promotion of education and culture, which was viewed as preventive censorship. Other criticised proposals related to weakening professional secrecy in journalism, the elimination of public financing for campaigns, the reorganisation of state structures, and the nomination process for members of key institutions such

as the National Electoral Institute (new authority to administer elections) and the Supreme Court of Justice.

3.3. Institutional Context

The Legislative Assembly

The 84-seat Legislative Assembly elected on 28 February 2021 is composed of *Nuevas Ideas* with 55 seats, ARENA 14, GANA 6, FMLN 4, PCN 2, PDC 1, *Vamos* 1, *Nuestro Tiempo* 1, and two independent members. Running for the first time, *Nuevas Ideas* obtained a qualified majority (together with its brother party, GANA) – two thirds of seats. This majority is required to appoint the holders of key state institutions, including the Public Prosecutor, Human Rights Ombudsperson, and members of the Supreme Court of Justice and the Court of Auditors. It also permits approval of the national budget and the authority to ratify international loans. *Nuevas Ideas* has the support of GANA, PCN and PDC, as such it has a special majority of 63 votes, which gives the option to suspend several constitutional guarantees.

The first decision of the Legislative Assembly in May 2021 was to dismiss all five Constitutional Chamber magistrates and the Public Prosecutor. This decision was controversial and highly questioned. In September, the Legislative Assembly amended the *Ley de Carrera Judicial* to bring about the automatic retirement of judges and public prosecutors at age 60 and/or after 30 years of service. This forced the retirement of one-third of the country's 690 judges and dozens of public prosecutors.

In the first trimester of its mandate, the Legislative Assembly approved more than 50 legal reforms, following a dispensation for a shortened procedure without debate. According to legal experts, Constitutional Chamber jurisprudence permits the use of this special dispensation when there is an objective and justified urgency for approval. The only law in relation to elections that was passed up until now was the September 2021 *Ley Especial de Sufragio en el Extranjero*. This was further to a Constitutional Chamber ruling recognising passive political rights for Salvadorans living abroad. Previously, Salvadorans abroad only had active voting rights.

The Electoral Law forbids amending applicable legislation during the year prior to an election. Therefore, all changes aiming to modify the legal framework of the February 2024 elections should come into force before February 2023. This limitation does not affect regulations or instructions issued by the TSE or other state bodies. This window of opportunity is sufficient for the Legislative Assembly to enact electoral reforms well ahead of the upcoming polls.

Electoral and Constitutional Reforms Commission of the Legislative Assembly

The Electoral and Constitutional Reforms Commission of the Legislative Assembly (CREC) had an almost completely renewed member composition following the legislative elections. It is composed of 7 members from *Nuevas Ideas*, GANA 1, FMLN 1, and ARENA 1. One of the first actions of the Commission was to archive all 83 files that were on the docket, arguing that some were obsolete and that in general the approach to analysis applied by the previous Commission was not conducive to responding to the needs of Salvadorans.

The Commission has concentrated all efforts to date on the *Ley Especial de Sufragio en el Extranjero*, a framework law that requires a comprehensive regulation in order to implement. Once the law was adopted, the Commission initiated a consultative process with the Salvadoran diaspora to discuss modalities for its implementation. The Commission indicated it would not analyse other

electoral issues until discussions on the application of the new law were complete. As such, there is currently no legislative agenda for electoral reform.

Supreme Electoral Tribunal (TSE)

The ten-member TSE was appointed by the Legislative Assembly in August 2019 and holds its mandate until August 2024. Six magistrates were selected based on proposals from the most-voted political parties or coalitions in the 2019 presidential polls: GANA, ARENA and its coalition parties, and FMLN. *Nuevas Ideas* did not participate in the selection of current TSE members. The remaining four were selected from proposals submitted by the Supreme Court of Justice. For the first time in its history, the TSE Board is led by a woman, who was elected from the GANA-proposed shortlist. Many countries in the region have a similar election management selection process. This works well when, once selected, all its members are viewed to perform impartially and efficiently.

Interlocutors highlighted the positive technical and administrative preparations for the 2021 legislative and municipal polls. EU EOM recommendations in relation to poll worker training on determining the validity of the ballot and in filling out results protocols were addressed through the introduction of technology that streamlined the transmission and tabulation of results processes. On the other hand, it was perceived that the TSE lacked the will to take firm decisions when faced with politically sensitive issues, including pre-campaigning, controls over political party financing, and enforcement of campaign silence.

There were some criticisms on the independence of the TSE. On the day after the Constitutional Chamber ruled that presidential re-election was permitted, the TSE publicly announced it would abide by this decision. Interlocutors stated that it was unnecessary for the TSE to comment on the issue at that stage, particularly given that the Chamber decision was highly controversial.

Organisation of the 2024 general elections will be complex, considering the simultaneous celebration of four levels of elections and the inherent challenges of implementing the open list cross-voting system. Introduction of the new law on active and passive suffrage for Salvadorans living abroad will add new challenges for election management. This would include the need to develop the modality for voting (e-voting, postal voting, internet voting, etc.) and logistics related to its implementation. The timely receipt of funding will be key. Other priority areas for the TSE, include update to the voter register, review of mapping of polling station locations to bring the vote closer to electors, improving the candidate registration process, and continued development of technology applications (especially for voter registration and the transmission and consolidation of results).

Regarding the TSE's institutionalism and its role as the ultimate arbiter in electoral issues, it is noteworthy that the electoral authority was not consulted on the new law regarding out-of-country voting or the Executive's proposed constitutional reforms relating to the electoral framework.

Electoral Oversight Board (JVE)

The Electoral Oversight Board (JVE) is a permanent body formed by representatives of all registered political parties. It is responsible for overseeing the activities and performance of the TSE, including the voter registration process and the transmission of results system. For the latter, the JVE includes IT specialists corresponding to each of the represented parties, however, it was reported to the EU EFM that technicians were not permitted access to audit the technical components of 2021 elections. The JVE also provided recommendations in relation to updating the voter register, improving poll worker training, and introducing instructions to political parties

regarding campaign advertising. However, communications with the TSE are fragile and its proposals and recommendations were mostly ignored.

Constitutional Chamber of the Supreme Court of Justice

While TSE decisions are final, the Constitutional Chamber may exceptionally examine these through appeals for constitutional protection or a claim of unconstitutionality. The interpretations of previous Chambers provoked electoral reforms that were seen as democratic advances, such as the partisan disengagement from electoral bodies and new criteria for internal party primary elections.

Following the 1 May 2021 replacement of the five Constitutional Chamber magistrates, stakeholders claimed that legally established procedures had not been followed and that these decisions had jeopardised judicial independence and separation of powers. Dismissal and replacement of these magistrates was appealed before the Inter-American Human Rights Commission, with a request for temporary protective measures.

On 3 September 2021, the Constitutional Chamber adopted a decision authorising a second consecutive presidential mandate. The Chamber was of the opinion that the Constitution should be interpreted in a way that permits adaption to social changes over time and citizens' developing needs. This decision contradicts previous jurisprudence of the Constitutional Chamber. Broad sectors of the judiciary, civil society, academia, and the international community were quick to condemn this decision which they considered contrary to constitutional provisions.

According to interlocutors, the Constitutional Chamber magistrates refrained from giving an opinion on a number of other relevant issues, including on a law in relation to the purchase of medical treatments during the pandemic, which was considered a retroactive immunity for civil servants for decisions involving state expenditure, or reform of the *Ley de Carrera Judicial*.

4. IMPLEMENTATION STATUS OF EU EOM RECOMENDATIONS

The 2018 and 2019 EU Election Observation Missions issued a combined total of 32 recommendations, among which were the following priority recommendations:

- Adjust administrative and penal sanctions for electoral infractions as they are neither dissuasive nor proportional with the misconduct;
- Depoliticise TSE temporary structures and administrative units; initiate debate on reform of TSE structure and composition;
- Allow independent candidates to stand for presidential and municipal elections;
- Disengage state media from government control;
- Improve the TSE's capacity to audit political finance and adopt adequate sanctions for non-compliance;
- Guarantee respect for the electoral silence period;
- Establish clear criteria for determining the validity of ballot papers, improving accuracy of results protocols, and reviewing results protocols.

So far, some progress was made to address these recommendations. Three were fully implemented: Two were in relation to poll worker training on determining the validity of the ballot and on filling out results protocols (recommendations 29 and 30). The third referred to optimising the efficiency and transparency of the transmission and tabulation of results processes (32). These recommendations were implemented through the introduction of election technologies.

Five were partially addressed through implementing positive steps to protect women candidates from political violence (24), the political participation of LGBTI persons (27), freeing polling staff from partisan interference (28), initiate debate on the TSE structure and composition (7), and to allow independent candidates for municipal elections (11).

Additionally, the recommendation to verify the authenticity of candidate declarations (13) is a complex issue and a difficult one for the TSE to address. The EU EFM reconsidered this recommendation and removed it from the 32 offered recommendations.

Of the remaining 28 recommendations, there are 20 that can be totally or partially addressed through legal reform.³ Among these, three require constitutional reform: allow voting rights for citizens with notoriously flawed conduct and those with a conviction for felony (4), allow independent presidential candidates (12), and allow voting rights for those of unsound mind (24).

The remaining eight recommendations can be implemented through administrative changes and could be addressed by the TSE either by enforcing existing legislation, issuing specific regulations or restructuring its administrative units.⁴ Some of these are also directed towards the government, and these are mostly in relation to enforcement of existing legislation.

The TSE claims that implementation of most of the recommendations addressed to them requires more human and monetary resources (e.g. control over political financing, voting for prisoners in preventive detention and those with mobility constraints). The TSE indicated that the current budgetary priority is the implementation of out-of-country voting. For other recommendations, such as that referring to electoral silence, the TSE redirects responsibility to political parties.

The EU EFM believes that some recommendations, such as the introduction of administrative procedures to process claims and appeals in a timely manner, the depoliticisation of TSE temporary structures and administration units, and improved control over political financing do not require additional resources, rather an improved organisation and efficiency in decision-making.

A total lack of progress, if not regression, in the media sector is the most negative note in the current outlook (16 to 21). According to most interlocutors, state-owned media do not cover a plurality of voices, instead they increasingly echoed the government's points of view. They also emphasised that access to information has shrunk and journalists' exposure to pressure and intimidation has increased. Discussions on a new press law to protect independent and investigative journalism have halted. The need to ensure a more adequate distribution of governmental advertisements, protection of independent media and their access to information has intensified, and so has the need to ensure protection from online defamation and smear campaigns. International and regional organisations have condemned the government's management of the media sector.

The EU EFM is aware of the time constraints involved for the implementation of recommendations requiring legislative change. This derives from non-synchronised holding of presidential, legislative and municipal elections, and the prohibition to adopt any legal reform applicable to an election during the preceding year. For the 2024 general elections, any electoral legislative reform should be undertaken before February 2023. The recommendations requiring constitutional amendment cannot be implemented by the 2024 elections, as the procedure for amending the Constitution requires the approval of two consecutive legislatures.

³ Can be totally implemented through legal reform – recommendations 1, 3, 4, 11, 12, 13, 14, 24, and 25; can be partially implemented through legal reform – recommendations 2, 8, 15, 16, 17, 20, 21, 22, 23, and 27.

⁴ Can be implemented through administrative change – recommendations 5, 6, 7, 9, 10, 18, 19, and 26.

4.1. Legal Framework

(EU EFM 2021 table of recommendations 1-3)

The EU EOMs offered three recommendations to improve the legal framework. To date, none of these recommendations has been addressed. One priority recommendation referred to adjusting administrative and penal sanctions for electoral infractions as they are neither dissuasive nor proportional with the misconduct (1). The other two addressed the need for clear administrative and judicial procedures and expeditious deadlines for resolution of complaints and appeals relating to candidate registration by the TSE and the Constitutional Chamber (2 and 3). Full implementation of these recommendations would require amendments to provisions of the Electoral Law, Penal Code, and Law on Constitutional Procedures. Moreover, the EU EOMs recommended the TSE bolster compliance with existing law, which may have been achieved even in the absence of legal reform.

Regarding recommendation number one, the CREC's roadmap in the last legislature (2018-2021) included the need to reform sanctions for electoral offences. Recommendation two for adjusting administrative legal deadlines for complaints and appeals was never considered. On recommendation three, a Law on Constitutional Procedures was under discussion in early 2019, but was set aside with the pandemic outbreak and the electoral campaign for the 2021 polls. The CREC in the current legislature archived this proposal.

The TSE claimed it was unable to improve administrative procedures as its legal division was understaffed and overworked. The EU EFM believes that the TSE legal division could take advantage of the time available in this non-electoral period to develop administrative procedures and be prepared for the 2024 candidacy period.

4.2. Right to Vote

(EU EFM 2021 table of recommendations 4-5)

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 consecutive re-election of the President (4). These provisions introduce an element of discretion in the exclusion process that runs counter to El Salvador's international commitments. Ideally, political rights may only be suspended or excluded on grounds which are established by law and which are objective and reasonable. 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 constitutional amendment. The 2021 proposal for a comprehensive constitutional reform eliminates both grounds for limiting the right to vote.

Another recommendation deals with the disenfranchisement of eligible voters who cannot reach their designated polling stations (5). The regulatory framework does not foresee alternatives to in-person voting for those with serious mobility difficulties and pre-trial detainees. The TSE, the Human Rights Ombudsperson, and other state authorities acknowledged efforts could be made to provide for the effective voting of electors with mobility issues. While denying political rights to non-convicted prisoners goes against El Salvador's international commitments, interlocutors noted that facilitating voting for this category of citizens is unpopular given the high criminality rates in the country.

Implementation of this recommendation would require additional resources. The electoral authority indicated that there is currently a prioritisation of resources for out-of-country voting. The EU EFM believes that at the same time initiatives are undertaken to identify mechanisms and resources to

implement the *Ley Especial de Sufragio en el Extranjero*, a parallel study could centre on improving effective voting rights for eligible voters in country.

4.3. Election Administration

(EU EFM 2021 table of recommendations 6-9)

The EU EOMs offered a total of four recommendations aimed at: the depoliticisation of TSE temporary structures and administrative units; initiate debate on reform of TSE structure and composition; ensure TSE's financial independence; and strengthen legal support and communication channels within TSE structures.

Depoliticisation of TSE temporary structures and administrative units (6)

The depoliticisation of TSE temporary structures is a priority recommendation, this is also a long-standing demand of civil society organisations. In September 2019, the CREC debated the removal of political parties from proposing polling staff, but political parties could not arrive at an agreement on the issue.

The EU EFM would like to further clarify this recommendation, inasmuch as it does not comment on whether or not temporary staff should or should not be nominated by political parties. The 2015 Constitutional Chamber decision on this matter recognised the right of political parties to nominate candidates as long as they had no political affiliation. Many countries in the region have a similar election management composition and this works well when, once selected, all its members are viewed to perform in line with the guiding principles on election management. As such, implementation of this recommendation does not require legal amendment, rather measures to ensure that TSE staff act impartially and independently from the party that nominated them.

Initiate debate on reform of TSE structure and composition (7)

There have long been calls from various sectors for the separation of TSE administrative and jurisdictional functions. Depending on the result of the debate recommended by the EU EOMs, reform of the Electoral Law or even of the Constitution could be necessary. The TSE's inefficiency in managing campaign rule violations, early campaigning, defamation and smear campaigns on social media, insufficient control over political financing and the illegal use of state resources, reinforces voices that support a separation of administrative and judicial powers.

The separation of TSE functions was in the previous CREC's ten-point roadmap, but as the 2021 polls approached no agreement had been reached. The current proposal for constitutional reform foresees division of the TSE into two institutions. Electoral administration would fall under the responsibility of a National Electoral Institute composed of five members nominated by the most-voted political lists in the previous presidential polls (four members) and the yet to be constituted Bar Association (one member). Jurisdictional matters would fall under responsibility of an Electoral Chamber of the Supreme Court of Justice. This would be composed of magistrates elected by the Legislative Assembly upon nomination by the Bar Association. Some stakeholders criticised that the involvement of the Bar Association would only serve to further politicise the selection process for members of the electoral institutions.

Whatever decision is adopted for the structure of the electoral authority, TSE administrative decisions should be subject to appeal before a high court of justice, an aspect which would be in line with international standards. In the interim period, the TSE could achieve a more effective electoral justice by establishing administrative procedures and strengthening the TSE's legal division (in line with recommendation 3).

Ensure TSE's financial independence (8)

The TSE submitted a proposal in the previous legislature aimed at ensuring its financial independence from the government. The proposal envisaged amending article 274 of the Electoral Law in order that the Ministry of Finance could not to modify the TSE budget. The proposal was never discussed at CREC level, and was subsequently archived when the current CREC was established. Strengthening the TSE's financial independence and guaranteeing adequate resources is important to ensure the electoral authority's capacity to thoroughly fulfil its mandate (as referenced in other parts of the report). However, consideration could be given to more effective use of available resources.

Legal capacities and communication channels within TSE structures (9)

Despite the original intention and commitment to proceed with strengthening legal capacities, the recommendation remained unattended in both TSE strategic and operational plans for the 2021 elections. The TSE indicated it lacked resources to bolster its legal division.

The TSE informed the EU EFM that it had much improved vertical communication channels from the Board level down to the Departmental and Municipal levels. However, stakeholders pointed to persisting deficiencies. As mentioned in the *Institutional Context* of this report, communications between the JVE and the TSE are fragile, with the TSE largely ignoring the role of this inter-party consultative body. The EU EFM does not have the capacity to assess communication channels within TSE structures, this is an aspect that will have to be observed during an electoral process.

4.4. Voter Registration

(EU EFM 2021 table of recommendation 10)

EU EOMs recommended a comprehensive update of the National Registry for Natural Persons (RNPN), and easing the requirements in place and procedures for citizens living abroad to update their residency status.

On 31 October 2019, the Legislative Assembly adopted Decree no. 466, an amendment to the Electoral Law, imposing sanctions to municipal civil registries, RNPN officials, and the judiciary for late or non-communication of changes to citizens' status. The amendment also provided for fines to judges and court officials who do not report disenfranchisements based on convictions or other legally-determined reasons. President Bukele subsequently vetoed this amendment considering it unconstitutional on different grounds, including that the drafting process did not involve participation of relevant institutions, and the deadlines in the amended law were not harmonised with administrative deadlines of the involved institutions. The consequent redrafting process stalled.

Since the 2019 polls, positive steps were undertaken to improve the quality of the voter register, including for the 2021 polls when outdated residency information appeared to have been dealt with more efficiently than in the past, with more than 102,000 deletions. Stakeholder concerns remain about the high number of deceased, disappeared, and emigrated citizens in the voter register, although no accurate data is available. One problem is a lack of resources at municipal level to expeditiously update changes on civil status. Another problem relates to slow inter-institutional communication of updates. The TSE signalled that an update of the voter register is a priority ahead of the 2024 polls.

The recommendation includes easing the requirements in place and procedures for citizens living abroad to update their residence status. Following adoption of the *Ley Especial para Sufragio en el*

Extranjero, implementation of this recommendation is increasingly relevant. In this regard, the RNPN opened offices in Australia, Italy, Panama, Mexico, Belize, Costa Rica and the USA to allow out-of-country voters to update their residence status. During 2021 and up until the time of reporting, the RNPN had handed over more than 100,000 ID cards abroad. In addition, the RNPN introduced a procedure for immediate printing and handover of ID cards. Since this began on 2 August 2021 and up until 5 October, the RNPN had produced over 27,000 ID cards. Outside of El Salvador, the RNPN handed over more than a total of 102,000 ID cards during 2021. The issuance of ID cards abroad is particularly relevant given stakeholders' concerns that out-of-country citizens will be allowed to register to vote with expired documents.

4.5. Candidate Registration

(EU EFM 2021 table of recommendations 11-14)

EU EOMs recommended allowing independent candidates to stand for presidential and municipal elections (11 and 12). The introduction of independent presidential candidates requires a constitutional amendment, while the introduction of independent municipal candidates requires amendments to the Electoral Law and the Political Parties Law. In October 2020, the Constitutional Chamber declared that independent candidates could run for municipal elections, but this was not implemented as there is no regulatory framework. The proposal for constitutional reform includes the possibility of independent candidates for all levels of elections. It is noteworthy to mention that independent legislative candidates in 2021 complained about burdensome requirements for the registration process. Out of 61 initial candidate registrations, only two eventually registered.

The recommendation to verify the authenticity of candidate declarations (13) is a complex issue and a difficult one for the TSE to address. There are numerous candidate registration requirements, including handover of certificates that emanate from third institutions and sworn affidavits on different issues. These requirements might exceed those established in international standards. In practical terms, the TSE has to process potentially thousands of documents. Current TSE efforts with the UNDP for the automatization of the candidate registration system are positive in terms of streamlining the candidate registration process. However, the verification of the authenticity of these documents, and veracity of sworn affidavits, is a virtually impossible task for the TSE. As such, verification should only be triggered upon challenges. The EU EFM has reconsidered this recommendation and removes it from the EU EOMs offered recommendations.

The recommendation on the right of independent candidates to appoint agents and to receive campaign financing and advertisement slots in the public media (14) would require amendments to articles 121, 123, 124 and 128 of the Electoral Law. There is no change with regards to this recommendation. Discussion on this recommendation could take place within a wider debate on access to public funding and state media by political organisations and candidates.

4.6. Media and Elections

(EU EFM 2021 table of recommendations 15-21)

The EU EOMs offered seven recommendations aimed at improving the media framework. Recommendations referred to extending free airtime in public media and extending this to independent candidates, effectively fight against violence and pressure against journalists, fairer distribution of government advertising, equitable access to the media, disengage state media from government control, monitor disinformation to address fake news and smear campaigns, and extend licences and frequencies to community radios.

Effectively fight against violence and pressure against journalists (16)

The recommendation on the protection of journalists could be addressed through modifications in relation to contempt, libel and defamation offences in articles 181 and 339 of the 1997 Penal Code, article 15 of the 2013 Special Law on the Right to Rectification and Response or through adoption of a law on protection of journalists. The previous CREC was studying a draft law on the protection of journalists. However, the bill did not receive enough votes to pass to the plenary of the Legislative Assembly. In May 2021, various groups presented a new law on the protection of journalists.

Most interlocutors pointed to a deterioration in working conditions for journalists over the last two years, with smear campaigns against outlets and critical journalists, limited access to information, digital harassment and threats against journalists, especially women. In mid-2020, the Association of Journalists of El Salvador (APES) established a commission to investigate harassment against journalists.⁵ Over the course of 2021, El Salvador's placing on the World Press Freedom Index dropped by eight points to position number 81 out of 180 countries.⁶

Interlocutors indicated that independent media are often publicly rebuked by the government for holding critical views. This led to the Inter-American Human Rights Commission (CIDH/IACHR) to sharing in its annual report that the threats against freedom of expression worsened in 2020.⁷ The Special Rapporteur observed with concern that the hostile climate towards the work of the press was largely encouraged by the government. Interlocutors perceived fiscal audits of selected media outlets were used as a way to put pressure on them. The IACHR granted, in February 2021, precautionary measures in favour of El Faro, whose journalists were allegedly harassed, threatened and intimidated on social networks due to their work as journalists.⁸

Extend free airtime in public media (15)

The Political Parties Law sets forth the allocation of free airtime to all electoral contestants in the state-owned media during the last five days of the campaign period. The practical application of the five-day free airtime deteriorated progressively over several electoral cycles, as the TSE did not take the initiative to share in a timely manner a broadcasting schedule for political parties on the state-owned channels. This was repeated in the 2021 elections. Extending free airtime may not address the main objective of this recommendation, rather the involved institutions need to make greater efforts to distribute in advance these free airtime slots and ensure that contenders are informed about the same. Once the provision of free airtime is adequately organised, consideration could be given to amend the Election Law and Political Party Law to extend the five-day period.

⁵ Investigations revealed that during the first months of 2021, there were 113 incidents involving journalist, compared to 125 during the whole of 2020, 77 in 2019, and 65 in 2018.

⁶ Reporters Without Borders 2021 World Press Freedom Index: "Since taking office as president in June 2019, Nayib Bukele has attacked and threatened journalists critical of his government, has blocked many of them on social media, and has used the extremely dangerous tactic of trying to portray the media as an enemy of the people."

⁷ Inter-American Human Rights Commission (CIDH/IACHR) sharing in its annual report 2020.

⁸ Inter-American Human Rights Commission Resolution 12/2021.

Fairer distribution of government advertising and disengage state media from government control (17 and 19)

Interlocutors reported that the government uses advertising to support state-owned and non-critical media on the one hand and to pressure or to punish critical outlets on the other hand.⁹ The *Sociedad Interamericana de Prensa* denounced this practice, and added that some media are excluded from covering official events. Moreover, interlocutors indicated that in state-controlled media, such as the daily *Diario El Salvador* (launched on 19 October 2020), *Canal 10* and *Radio El Salvador*, the government is almost the only advertiser.¹⁰ The importance of regulating governmental advertising has become much more acute following the 2021 polls, with the non-attribution of free airtime and non-disbursement of public funding for the electoral campaign (see recommendations 18 and 23).

Provisions for equitable access to the media by parties and candidates, and media objectivity and impartiality in coverage of electoral processes (18)

There is no dedicated Press Law regulating media content in terms of equity and pluralism. A 2013 draft Law on Public Media was unsuccessful. In the 2021 polls, political parties could not use the free airtime slots on state-owned media foreseen by law, as neither the TSE nor these media had scheduled a plan for broadcasting the slots. Observers reported that state-owned media were strongly pro-government in their reporting, while private media complained about denial of information to journalists.

In terms of access to public information, interlocutors considered that the Institute for the Access to Public Information (IAIP) has come much more under governmental control and has lost its independence. In July 2021, the Executive initiated reforms to the law on access to public information, including extended deadlines for responding to information requests, reserving information relating to civil servants' assets, and restricting work-related travel information regarding advisors and civil servants. According to interlocutors, this diminished transparency in government and ran counter to the jurisprudence of the Constitutional Chamber. Some private media claimed that they often only became aware of government activities through social media, as government officials did not grant them interviews and only made statements through their Twitter accounts, a platform which emerges regularly as the primary source of government information.

Monitoring disinformation and smear campaigns (20)

The TSE expressed the intention to set up a disinformation monitoring unit that could be part of its larger role in monitoring campaign violations. However, so far this plan has not materialised, as the TSE claims limited resources to undertake such an initiative. In the absence of other State mechanisms to present fact-checked information to the public, and ahead of the 2024 elections, CSOs and independent media could take up this role and set up specific fact-checking projects.

Extend licences and frequencies to community radios (21)

The 2016 amendments to the Law on Telecommunications, which recognise the role of community radios and grants an exemption on the annual frequency tax, has not been fully implemented. It appears that the National Bureau of Electricity and Telecommunications (SIGET) has no intention to modify the existing framework for community radios. Community radios under the umbrella of

⁹ Allegedly, *Canal 33* suffered such consequences after the TV changed its editorial line, and *El Diario de Hoy* had government advertising withdrawn after publishing that some journalists were not allowed to attend a press conference of the President.

¹⁰ According *La Prensa Gráfica*, during its first two months of publications 94 per cent of *Diario El Salvador's* advertisements were reported to stem from governmental agencies.

the Association of Participative Radios (ARPAS) continue to share one national frequency for the 22 associated radio stations throughout the country. Interlocutors indicated that the government seized control of some of the CONAB-administered media upon which a government-friendly editorial line was imposed.

4.7. Campaign Finance

(EU EFM 2021 table of recommendations 22-23)

EU EOMs recommended improving the TSE's capacity to audit political finance and adopt adequate sanctions for non-compliance, and the introduction of spending limits on political advertising in private media.

TSE's capacity to audit political finance and adopt adequate sanctions for non-compliance (22)

The Electoral Law gives the TSE responsibility for monitoring political party finance. So far, the TSE has done little towards undertaking this function. The TSE reported that the problem originates in insufficient human and financial resources. Civil society organisations point to a lack of regulation over advertising and accountability, ineffective sanctions, and limited follow-up and control by the TSE and other involved institutions, including the Public Prosecutor, Court of Audit, and the Electoral Oversight Board (JVE). As proposed by the TSE and civil society organisations, an adequately resourced specialised unit within the electoral authority would be beneficial, but this would necessarily need to be combined with a regulatory framework (reporting, transparency, etc.), know-how (training), and the commensurate political will to implement this function. In order for control over political financing to be effective, the TSE's independence must be respected.

Amendments to existing provisions of the Electoral Law and Political Party Law would be required in order to adopt new sanctions. In 2019, the CREC analysed this issue and highlighted the importance of having a regulatory framework in place. No further action has been taken in this respect.

Introduce spending limits on political advertising in private media (23)

To implement this recommendation, amendments to existing provisions of the Electoral Law and Political Party Law are required. There have been no plans to modify the existing framework for political advertising in the private media.

For the 2021 polls, the government bypassed legal provision for public funding advances on grounds of COVID-19 austerity measures. On 3 February 2021, the Constitutional Chamber ordered the immediate transfer of the due funds, however, the government ignored the ruling and did not disburse funds.¹¹ This effectively deprived political parties of the possibility to compete on a level playing field. According to interlocutors, government advertising on achievements and new activities accounted for the overwhelming majority of total campaign expenditures.

The introduction of campaign spending limits to ensure a level playing field must be undertaken in tandem with guaranteed public financing, as well as improved scrutiny over private financing, government spending on advertising, and misuse of state resources.

¹¹ Constitutional Chamber ruling.

4.8. Political Participation of Women

(EU EFM 2021 table of recommendation 24)

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 women candidates in all elections, except the presidential race. In April 2019, the Legislative Assembly amended the Electoral Law requiring gender parity in independent candidates' tickets. In December 2019, the Women's Parliamentary Group submitted a draft bill which would have required gender parity and alternation in candidate lists. Although this was discussed by the CREC, the proposal was not passed and the current CREC archived the draft bill.

The Legislative Assembly includes slightly fewer women (29 per cent) than in previous legislatures. One impediment to gender parity is the preferential vote system. To increase the number of elected women would require affirmative measures, including training, financial support, and the possibility to campaign free from political violence.

In March 2021, the *Ley Especial para una Vida Integral Libre de Violencia por las Mujeres* (LEIV) was amended to typify political violence against women. Interlocutors reported increased levels of violence and intimidation against women candidates in the 2021 polls. The TSE reported that, in collaboration with the UNDP and UN Women, it undertook positive measures, including the launch of a campaign to sensitise the population and prevent political violence against women candidates. Another measure included the withdrawal of two candidacies on the grounds that they committed political violence against women. To this end, the TSE Gender Unit is developing a protocol outlining the legal mechanisms available for women candidates who were victims of political violence. The Gender Unit also undertook important initiatives to mainstream participation and parity throughout electoral preparation activities and voter information events.

4.9. Political Participation of Indigenous Peoples

(EU EFM 2021 table of recommendation 25)

The EU EOM 2018 recommended affirmative action to address the lack of inclusion of indigenous peoples in political life and to promote their representation in elected institutions. Since the 2019 polls some initiative was undertaken, as three additional municipalities issued ordinances recognising indigenous rights and committing the municipality to promote the effective exercise of these rights. Still, only nine of the country's 262 municipalities dispose of such municipal ordinances.

Interlocutors indicated that indigenous relevant themes are scarcely included in political programmes. For the 2021 polls, only two of the running parties considered indigenous demands: the FMLN proposed to call for a National Indigenous Congress to increase the indigenous population's participation, and President Bukele's Plan Cuscatlán stressed the concerns of indigenous peoples and called for the creation of a National Institute for Salvadoran Multicultural Investigation. The creation of this institute was stalled with the arrival of the COVID-19 pandemic. In the 2021 polls, no indigenous candidate won a mandate.

4.10. Political Participation of Persons with Disabilities

(EU EFM 2021 table of recommendation 26)

The 2019 EU EOM recommended removal of existing limitations on the right to vote based on declarations of legal incompetence or unsound mind. This recommendation would require an amendment to the Constitution regarding the right to vote. This restriction is inconsistent with provisions in the Convention on the Rights of Persons with Disabilities (CRPD). The Human Rights Ombudsperson informed the EU EFM that his office received a negative public response to discussion on this recommendation.

A new *Ley Especial de Inclusión de las Personas con Discapacidad* entered into force on 1 January 2021. This law, which was passed with the support of the Human Rights Ombudsperson and the National Council for Attention to Persons with Disabilities (CONAIPD), provides a certain autonomy and power to CONAIPD. However, some interlocutors were disappointed that the new law does not define a minimal quota to guarantee the political participation of persons with disabilities. Disabled candidates are frequently listed as reserves or positioned at the bottom of candidate lists.

In the 2021 polls, the TSE signed a cooperation agreement with CONAIPD towards facilitating voting for persons with disabilities by issuing specific instructions on procedures for assisted voting and reducing physical barriers in polling centres.

4.11. Political Participation of the LGBTI Community

(EU EFM 2021 table of recommendation 27)

A draft bill on Gender Identity, aimed at recognising 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. This draft bill was archived by the current Legislative Assembly. To date, only a handful of transgender and transsexual citizens have had their gender identity recognised after individual court decisions.

For the 2021 polls, the TSE facilitated the registration of a transgender candidate by accepting the candidacy based on her new name despite her national ID card reflecting a male gender. Stakeholders reported that the TSE Division for Training and Civic Education ran specific civic awareness events on how to facilitate and ensure full respect and enjoyment of civil and political rights for members of the LGTBI community.

4.12. Polling, Counting, Tabulation of Results and Election Technology

(EU EFM 2021 table of recommendations 28-32)

The EU EOMs formulated a total of five recommendations on strengthening polling staff training and ensuring polling stations were free from partisan interference, establish clear procedures on the validity of the ballot papers, improving accuracy of and establish clear review criteria for results protocols, ensure respect for campaign silence period, and document all processes for the transmission and tabulation of preliminary results.

Strengthen polling staff training and ensure polling stations were free from partisan interference
(28)

This recommendation was partially implemented. For the 2021 polls, stakeholders reported that poll worker training was improved and staff seemed much more in control of the process. Training was modified and prolonged with additional sessions. The training programme was extended with

additional sessions to guarantee basic computer skills. Specific training was also tailored for polling station secretaries as the personnel that had to operate the digital kits for tallying. Training manuals were simple and user-friendly. Some cases of partisan interference in the running of polling stations was reported, indicating the need for continued efforts to achieve full independence of poll workers from the party that nominated them.

Establish clear criteria on the validity of the ballot papers (29), improve accuracy of and establish clear review criteria for results protocols (30), and document all processes for the transmission and tabulation of preliminary results (32)

These recommendations were fully implemented. For the 2021 polls, the TSE introduced automation of counting, transmission and tabulation processes. The development of a digital tallying application eliminated inconsistencies, as the application automatically calculated the voting fractions resulting from cross-marking of candidates. Stakeholders reported that the level of transparency was considerably improved, with clean results protocols immediately uploaded to the TSE results website, which could be verified by stakeholders in real time.

The TSE provided specific training manuals for counting (with a solid overview of all possible ballot-marking variations), tallying and transmission of results at polling station level. There was a particular emphasis on the user-friendliness of the instructions and on how to operate the digital tallying solution. The instructions for IT support staff were also adequate.

Ensure respect for campaign silence period (31)

Observers reported that for the 2021 polls electoral silence was not respected on election day nor during the three preceding days. Campaign materials were omnipresent and candidates, party representatives and government officials had a strong presence on public, private, and social media. The TSE did not take effective action to address the breaking campaign silence rule.

The TSE informed the EU EFM that ahead of every election, political parties are signatory to a code of conduct. This is a positive initiative, but is insufficient to ensure compliance with legal provisions. Instead of assuming its responsibility to enforce campaign rules, the TSE redirects responsibility to political parties. The fact that sanctions are largely considered insufficient to dissuade infractions, is not a solid argument for their non-application.

The importance of having a more detailed regulatory framework was acknowledged by the CREC when it analysed this issue ahead of the 2021 polls. The CREC, in consultation with the TSE, considered recommendations offered by election observation missions, including the use of campaign materials inside voting centres and political parties' responsibility to remove advertising before the beginning of the campaign silence period. Consensus was reached on some points, however debate on this issue was stalled with the arrival of the COVID-19 pandemic, and proposals to amend the Electoral Law were subsequently shelved by the new legislature. As such, there were neither legal nor administrative changes in regard to this recommendation, despite wide public opinion on the need to enforce existing rules and enact more stringent provisions.

5. THE STAKEHOLDER ROUNDTABLE

On 28 October 2021, the EU EFM organised in San Salvador an electoral stakeholder roundtable, *Advances and Challenges in Electoral Reform*. The main purpose of the roundtable was to serve as a forum for national interlocutors to exchange views on the implementation of EU EOM

recommendations in view of the 2024 general elections. The roundtable was chaired by the EU EFM Chief of Mission, Gabriel Mato, the President of the TSE, Dora Esmeralda Martínez de Barahona, the EU Ambassador to El Salvador, François Roudié, and attended by 25 participants representing the TSE, political parties, civil society organisations, international organisations, journalists, and the EU Delegation.

The roundtable focused on the non-implemented priority recommendations, but also considered other non-implemented recommendations and other reform initiatives. To facilitate the discussion, recommendations were grouped in three thematic areas: strengthening TSE's institutionalism, status of and challenges to electoral legal reform, and media and elections. Participants were invited to discuss openly on the EU EOM recommendations, their continued relevance, their feasibility, and opportunities for implementation ahead of the upcoming polls.

Participants stressed that the organisation of the 2024 general elections would be complex, considering the simultaneous celebration of four levels of elections and the inherent challenges of implementing the open list cross-voting system. Introduction of the new law on active and passive suffrage for Salvadorans living abroad was widely welcomed, but participants acknowledged that its implementation added new challenges for election management. Concerns remain in relation to identifying the modality of voting, registration requirements, and technologies to be applied. This will have to be undertaken with care so as to build confidence in the process.

Participants agreed on the need for a level playing field in campaigning, especially in relation to media access, withholding of public funding, and reinforcing supervision over political financing. The need to address the press situation and the deteriorating relationship between the government and media was highlighted. Recently, there has been a noticeable uptick in political violence against women, in particular on social networks, and this requires further regulation by the TSE.

Participants also concluded that the TSE needed to be sufficiently resourced and financed to better undertake its mandate and strengthen the institution. The TSE committed to continue with depoliticisation of the institution, prioritising staff selection in accordance with criteria of merit and qualification.

There was also consensus on the urgency to undertake electoral reform and establish a legislative agenda for the period 2021-2024. Ultimately, participants agreed that there was sufficient opportunity for meaningful reforms ahead of the 2024 polls. They also suggested that the roundtable should be considered as a point of departure for a continued discussion, and emphasised the importance that all stakeholders commit themselves to undertake this process in an inclusive manner, with constructive dialogue and tolerance. The international community indicated that support for electoral reform will continue.

6. CONCLUSIONS

The EU EFM welcomes the implementation and discussion of some of the 2018 and 2019 EU EOM recommendations. However, there remains a broad consensus that apart from advances made, there is an urgent need to undertake electoral reforms. The reform process must be guided by the need to protect the rights of Salvadorans, guaranteeing the independence of those who have the responsibility for protecting these rights. It should also be carried out within the context of legal certainty, as this is the pillar which sustains credibility with respect to institutional actions and ultimately citizens' confidence.

The EU EFM noted that civil society organisations, political parties and the TSE have been active in suggesting proposals for electoral reform. Some of these resulted in amendments to legislation that was applicable for the 2021 elections. More recently, the Legislative Assembly adopted the popularly-demanded *Ley Especial para Sufragio en el Extranjero*, which was welcomed by Salvadorans as it extended active voting rights to legislative and municipal elections and introduced passive political rights for all levels of elections.

Interlocutors also signalled the need to develop the *Ley Especial para Sufragio en el Extranjero*, with all the guarantees to ensure that suffrage is conducted in a credible manner. Given the complexity of out-of-country voting, the TSE will require substantial and timely funding.

The EU EFM maintains the priority recommendations established by previous missions, which generally coincide with those identified by interlocutors, including the need for improved supervision over political financing, depoliticisation of electoral staff, and enforcement and bolstering of campaign and media rules. Notwithstanding, interlocutors expressed that there has been a regression in the freedoms of expression and press, combined with an increase in online hate speech and disinformation.

The organisation of the 2024 general elections will be highly challenging given the simultaneous holding of four levels of elections and the inherent challenges of implementing the open list cross-voting system. The Legislative Assembly needs to establish a work agenda for the 2021-2024 period without delay, in order to amend the electoral framework within the timeframe provided by law for an effective implementation ahead of the 2024 polls. The EU EFM considers that it would be beneficial to address electoral reforms in a strategic manner, focusing first on those that could have the greatest impact on the 2024 polls.

Both the Legislative Assembly and the TSE need to engage in a consultative approach to examine electoral reforms with a wide range of interested stakeholders. The reform process should take place in a climate of dialogue and tolerance.

The EU has shown its commitment to consolidating democracy in El Salvador through deployment of numerous election missions over the past twelve years. The EU shares with Salvadorans its willingness to support a substantive and lasting electoral reform, and is dedicated to accompanying El Salvador's electoral process upon the continuing request of the country.

7. ANNEXES

ANNEX I: PRESS RELEASE

NOTA DE PRENSA San Salvador, 28 de octubre de 2021

La Misión de Seguimiento de la Unión Europea anima a todas las partes involucradas a que lleven a cabo el proceso de reforma electoral en un clima de diálogo y tolerancia

La Unión Europea (UE) desplegó una misión de seguimiento electoral en El Salvador el 11 de octubre de 2021, liderada por el diputado al Parlamento Europeo Gabriel Mato. El objetivo de la misión de seguimiento es conocer los esfuerzos en marcha para llevar a cabo una reforma electoral, a la luz de las recomendaciones presentadas por las misiones de observación de la Unión Europea en 2018 y 2019.

La misión pudo comprobar que 8 de las 32 recomendaciones se han implementado, total o parcialmente. Estas se refieren a la capacitación de los miembros de las juntas receptoras de voto, la mejora en la cumplimentación de las actas de resultados, y la optimización de la eficacia y transparencia en la transmisión y computo de resultados, entre otras.

Tras un intenso programa la misión ha tenido la oportunidad de reunirse con los actores clave de la vida política de El Salvador y valora la difícil tarea de afrontar unas reformas que todos coinciden que son absolutamente necesarias.

En una conferencia de prensa celebrada hoy, el Sr. Mato dijo que: *“Acogemos con satisfacción el hecho de que se hayan adoptado algunas de las recomendaciones ofrecidas por las misiones de observación electoral de 2018 y 2019. Además, nos alegra muy especialmente la adopción de la extensión del voto en el extranjero, un logro digno de ser destacado.”*

El Sr Mato añadió: *“Ahora bien, constatamos que queda un largo camino por recorrer. Un camino que, en todo caso, debe ir guiado por la necesidad de salvaguardar los derechos de todos y garantizando la independencia de quienes tienen la obligación constitucional de velar por el ejercicio de esos derechos. Además, este proceso debe darse en un marco de seguridad jurídica, pilar sobre el que se sostiene la certidumbre sobre las actuaciones de las instituciones y en definitiva la confianza ciudadana. Confío en que todas las partes involucradas se comprometan a llevar a cabo este proceso en un clima de diálogo y tolerancia al asumir los retos pendientes. La Unión Europea seguirá acompañando El Salvador en este proceso.”*

La misión permanecerá en el país hasta el día 7 de noviembre, y en las próximas semanas se publicará un informe final de la misión de seguimiento de la UE que servirá de base para el apoyo de la UE a las instituciones de El Salvador.

ANNEX II: ROUNDTABLE AGENDA

AGENDA

MESA REDONDA

AVANCES Y DESAFÍOS EN LA REFORMA ELECTORAL

Misión de Seguimiento Electoral de la Unión Europea
El Salvador, 28 de octubre 2021

HORA	ACTIVIDAD
9:15	Registro de participantes
9:30 – 9:45	Bienvenida a cargo del Jefe de la Misión de Seguimiento Electoral de la Unión Europea, el diputado al Parlamento Europeo Sr Gabriel Mato Intervención de la Presidenta de Tribunal Supremo Electoral, Dora Esmeralda Martínez de Barahona Intervención de Jefe de la Delegación de la Unión Europea, Embajador François Roudié
9:45 – 10:30	Presentaciones de áreas temáticas: 1. Fortalecimiento de la institucionalidad, Roberto Mora, TSE 2. Estatus y desafíos para la reforma legal electoral, Eduardo Escobar, Acción Ciudadana 3. Medios de comunicación y elecciones, César Castro, APES
10:30 – 11:25	Ronda de intervenciones y preguntas de los participantes
11:25 – 11:30	Clausura a cargo del Jefe de la Misión de Seguimiento Electoral de la Unión Europea, el diputado al Parlamento Europeo Sr Gabriel Mato

ANNEX III: MATRIX ON THE IMPLEMENTATION STATUS OF THE 2018 AND 2019 EU EOM RECOMMENDATIONS

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	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. (Legislative Assembly)	1	- This recommendation was not implemented. - A recalibration of sanctions would require legal amendments in the Electoral Law and Penal Code to be undertaken by the Legislative Assembly. - The previous Electoral and Constitutional Reform Commission's (CREC) roadmap acknowledged the need to apply sanctions on candidates in case of infractions. For example, in the case of breaking campaign silence rules. However, the current Commission initiated its work by archiving all previous proposals.
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. (Legislative Assembly, TSE)	1	- This recommendation was not implemented. - The recommendation has two parts, the introduction of timelines and deadlines requires amendments to the Electoral Law by the Legislative Assembly, and improvement of administrative procedures for timely processing of claims and appeals by TSE. - While the TSE claims that improvement of administrative procedures would require strengthening its legal unit with adequate human resources, the EU EFM believes that this could begin with an improved organisation and political will. The TSE could demand adherence to the Electoral Law through emitting regulations and imposing fines.
3	2019 (3)	Set clear timeframes, deadlines and/or procedures to guarantee timely resolution of all electoral legal opinions and appeals by the SC-CSJ to give effects to rights (including right to participate in public affairs and freedom of assembly) and ensure the right to an effective remedy. (Legislative Assembly)	1	- This recommendation was not implemented. - This would require the modification of the Law on Constitutional Procedures. - Draft amendments to the Law on Constitutional Procedures was under discussion in early 2019, but were set aside with the pandemic outbreak and the electoral campaign.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	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. (Legislative Assembly)	1	• This recommendation was not implemented. • Constitutional amendments would be required. Approval of amendments would span over two legislatures (approval by one Legislative Assembly, and ratification by the following one) before coming into force. • The previous CREC did not discuss this issue. The Constitutional Reform proposal by the Executive includes this issue in the context of a global review of 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. (TSE)	1	• This recommendation was not implemented. • This recommendation does not require legal change. • This recommendation would equally apply to pre-trial detainees and to those with mobility constraints. The latter is widely supported. • The Human Rights Ombudsperson's Office (PDDH) and the local CSO "Consortium for Electoral Reforms" (CRE) support granting pre-trial detainees voting.
III	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. (TSE and Legislative Assembly)	2	• This recommendation was not implemented, although some action was taken. • This recommendation does not require legal change. • In 2019, the former CREC debated the removal of political parties from proposing polling staff, but political parties could not arrive at an agreement on the issue. • Implementation of this recommendation requires measures to ensure that TSE staff act impartially and independently from the party that nominated. The EU EFM is not in a position to assess this aspect, rather this would require observation during an electoral process

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
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. (All stakeholders)	3	• This recommendation was not implemented, although some action was taken. • This recommendation does not require legal change. • The separation of the TSE functions was in the CREC's ten-point roadmap, but no agreement was reached. • Many CSOs were interested to learn from other regional options in order to choose the most adequate solution for El Salvador. • Depending on the result of the debate recommended by the EU EOMs, reform of the Electoral Law or even of the Constitution could be necessary. The Constitutional Reform proposal by the Executive included this issue in the context of a global review of both the Constitution and the Electoral Law.
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 training, media regulation enforcement and results management technology. (Legislative Assembly and Government)	2	• This recommendation was not implemented, although some action was taken. • This recommendation requires a change to the electoral law (Art. 274) for the TSE annual budget. • The TSE submitted to the National Assembly (2018-2021) an amendment to the Electoral Law to ensure that the ordinary TSE annual budget could not be modified by the Ministry of Finance. • The TSE indicated that the Ministry of Finance modified the TSE's extraordinary budget for the 2021 elections, which is prohibited in the Electoral Law.
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. (TSE)	1	• This recommendation was not implemented. • This recommendation does not require legal change. • Despite the original intention and commitment to proceed with this strengthening the TSE Legal Unit, the TSE informed the EU EFM that it lacks funds to do so. • In terms of internal TSE commendations, the EFM is not in a position to assess this aspect, rather this would require observation during an electoral process.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
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. (TSE, National Registry of Persons, Government)	2	- This recommendation was not implemented, although some action was taken. - This recommendation does not require legal change. - The National Assembly passed Decree n°466 imposing sanctions to Civil Register, RNPN officers and judiciary for omitted or belated communication on changes to citizens' status. The President vetoed this decree on 19.11.2019, and the consequent redrafting process stalled. - Positive steps were undertaken to improve the quality of the voter register, including when outdated residency information appeared to have been dealt with more efficiently than in the past, with more than 102,000 changes.
V	CANDIDATE REGISTRATION			
11	2018 (14)	Allow independent candidates and citizen's groups to submit candidatures for municipal elections. (Legislative Assembly)	3	- This recommendation was partially implemented. - There was a Constitutional Chamber decision in this respect (October 2020), however, it still requires a regulatory framework.
12	2019 (12)	Allowing independent presidential candidates. (Legislative Assembly)	1	- This recommendation was not implemented. - Constitutional amendments would be required. Approval of amendments would span over two legislatures (approval by one Legislative Assembly, and ratification by the following one) before coming into force.
13	2018 (8) 2019 (13)	Introduce mechanisms to allow the TSE to verify the authenticity of declarations within the legal registration period for candidates.	6	- This recommendation is no longer relevant. - Verification of the authenticity of these documents, and veracity of sworn affidavits, is a virtually impossible task for the TSE. As such, verification should only be triggered upon challenges.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
14	2018 (15)	Provide independent candidates the right to appoint agents and to receive campaign financing and advertising slots in the public media. (Legislative Assembly)	1	- This recommendation was not implemented. - This would require legal amendments in the Electoral Law.
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. (Legislative Assembly)	1	- This recommendation was not implemented. - This would require legal amendments in the Electoral Law and Political Parties Law. - Extending free airtime may not address the core issue, rather the involved institutions need to make greater efforts to distribute in advance these free airtime slots and ensure that parties and independent candidates are informed about the same. Once the provision of free airtime is adequately organised, consideration could be given to amend the Election Law and Political Party Law to extend the five-day period.
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 (Legislative Assembly, Government)	1	- This recommendation was not implemented. - Implementation of the recommendation with respect to violence against journalists and media outlets does not require legal change. However, it would be desirable to adopt a law specifically for the protection of journalists. - Implementation of the recommendation in relation to independent and investigative journalists would require legal change. - A draft law on protection for journalists was under review in 2018, but there has been no progress since. - The situation of freedom of expression and protection of journalists from pressure and intimidation has worsened, and discussions on a new media law to protect independent and investigative journalism has been stalled.
17	2018 (18)	Regulate institutional advertisement attribution mechanisms to ensure a more equal distribution of government publicity. (Government)	1	- This recommendation was not implemented. - Implementation of this recommendation does not require legal change, rather a regulatory framework. - The importance of regulating governmental advertising has become much more acute following the non-attribution of free airtime and the reduced financial means due to non-disbursement of public funding for the electoral campaign.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
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. (Legislative Assembly, Government)	1	• This recommendation was not implemented. • This would require adoption of a Press Law. • Political parties could not use the free airtime slots on state media in the 2021 polls, as foreseen by law.
19	2019 (15)	Disengage state media from direct government control and convert state media into genuine public service broadcasters with editorial independence. (Legislative Assembly, Government)	1	• This recommendation was not implemented. • This would require adoption of a Press Law. • It was reported to the EU EFM that the government uses advertising to support state-owned and non-critical media.
20	2019 (16)	Strengthen fact-checking collective knowledge and monitoring capacity of disinformation in order to minimise dissemination of fake news and smear campaigning. (Media and Civil Society)	1	• This recommendation was not implemented. • Implementation of this recommendation does not require legal change.
21	2019 (17)	Minimise concentration of media by allocating specific licences and radio frequencies to community radio stations. (SIGET)	1	• This recommendation was not implemented. • Implementation of this recommendation does not require legal change. • Community radio stations, under the umbrella of the Radio and Participative Programmes Association (ARPAS), continue to have access to only one single frequency.
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. (TSE and Legislative Assembly)	1	• This recommendation was not implemented. • Adoption of new sanctions would require amendments to the Electoral Law and the Political Parties Law. • An adequately resourced specialised unit within the electoral authority would be beneficial, but this would necessarily need to be combined with a regulatory framework (reporting, transparency, etc.), know-how (training), and the commensurate political will to implement this function.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
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. (Legislative Assembly)	1	• This recommendation was not implemented. • This would require legal amendment to Electoral Law and Political Parties Law. • Introduction of campaign spending limits to ensure a level playing field must be undertaken in tandem with guaranteed public financing, as well as improved scrutiny over private financing, government spending on advertising, and misuse of state resources.
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). (Legislative Assembly, TSE)	3	• This recommendation was partially implemented. • In March 2021, the <i>Ley Especial para una Vida Integral Libre de Violencia por las Mujeres</i> (LEIV) was amended to typify political violence against women. • In April 2019, the Legislative Assembly amended the Electoral Law requiring gender parity in independent candidates' tickets. • In December 2019, the Women's Parliamentary Group submitted a draft bill requiring parties and coalitions to make lists with gender parity and alternation. Although this was discussed by the previous CREC, the proposal was not passed and the current CREC archived the draft bill. • The Gender Unit of the TSE also undertook important initiatives to mainstream participation and parity throughout electoral preparation activities and voter information events. The Unit is developing a protocol outlining the legal mechanisms available for women candidates who were victims of political violence.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
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 life and ensure and facilitate the exercise of their political rights, especially to promote indigenous representation. (Government, Legislative Assembly, Municipal Councils, TSE)	1	- This recommendation was not implemented. - Implementation of this recommendation does not require legal change. - There are currently only nine out of 262 municipalities that provide "Municipal Ordinances" to increase the political participation of indigenous citizens.
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. (Legislative Assembly)	1	- This recommendation was not implemented. - Constitutional amendments would be required. Approval of amendments would span over two legislatures (approval by one Legislative Assembly, and ratification by the following one) before coming into force.
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. (Legislative Assembly)	3	- This recommendation was partially implemented. - Full implementation would require amendments to the <i>Ley de Nominación de Personas Naturales</i> and/or introduction of a Gender Identity Law. - A draft bill on Gender Identity was submitted in 2018 and studied by the CREC which invited CSOs to present recommendations. The new CREC archived this bill. - For the 2021 polls, the TSE facilitated the registration of a transgender candidate by accepting the candidacy based on her new name despite her national ID card reflecting a male gender. - Stakeholders reported that the TSE Division for Training and Civic Education ran specific civic awareness events on how to facilitate and ensure full respect and enjoyment of civil and political rights for members of the LGTBI community.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
XII	POLLING, COUNTING, TABULATION OF RESULTS AND ELECTION TECHNOLOGY			
28	2018 (3)	Strengthen polling staff training to empower polling staff as the authority in charge of conducting the electoral process at polling station level, free from partisan interference. (TSE)	3	• This recommendation was partially implemented. • Implementation of this recommendation does not require legal change. • The training programme was adequate, and polling staff seemed much more in control of the process during the 2021 polls.
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.	4	• This recommendation was fully implemented through improved training and the introduction of election technologies.
30	2018 (5, 6)	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. 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	4	• This recommendation was fully implemented through improved training and the introduction of election technologies.

NO	EU EOM Rec No.	Recommendations (priority in bold)	Status 1-6	Comments
31	2018 (7) 2019 (7)	Forbid all forms of canvassing and particularly the use of campaign material inside voting centres, such as distinctive clothing. 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 centres and statements by political leaders through media outlets. (TSE)	1	• This recommendation was not implemented. • Implementation of this recommendation does not require legal change. • The TSE informed the EU EFM that ahead of every election, political parties are signatory to a code of conduct. This is a positive initiative, but is insufficient to ensure compliance with legal provisions. Instead of assuming its responsibility to enforce campaign rules, the TSE redirects responsibility to political parties. The fact that sanctions are largely considered insufficient to dissuade infractions, is not a solid argument for their non-application. • The CREC acknowledged the importance of having a more detailed regulatory framework. The CREC, in consultation with the TSE, analysed the use of campaign materials inside voting centres and political parties' responsibility to remove advertising during the silence period. Debate was stalled with the arrival of the COVID-19 pandemic, and proposals to amend the Electoral Law were subsequently shelved by the new CREC.
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.	4	• This recommendation was fully implemented through improved training and the introduction of election technologies.

Category	Description	Implementation Status
1	No change	20
2	Action or activity is ongoing but implementation of the recommendation has not yet been confirmed	3
3	Partial implementation of recommendation	5
4	Full implementation of recommendation	3
5	Too early in electoral cycle to determine	0
6	Recommendation is no longer relevant	1

