



**EL SALVADOR**

**FINAL REPORT**

**General Elections 2009**

**EUROPEAN UNION**  
**ELECTION OBSERVATION MISSION**

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## **I. EXECUTIVE SUMMARY**

This report pursues two main objectives. On the one hand, it contains an overview of the main findings and conclusions of the European Union Election Observation Mission (EU EOM) that was deployed to El Salvador to observe the general elections held in 2009. On the other hand, and as its main purpose, it outlines a series of recommendations, based on these findings and in line with international commitments on electoral matters, which could lead to the introduction of some improvements with a view to future electoral processes. These recommendations are primarily directed to the executive and legislative branches of the Salvadoran government, who possess legislative initiative and the capacity to enact reforms in this field, but also towards the election administration, the political parties, the media as well as civil society.

Nearly twenty years after the end of the armed conflict in the country, the electoral processes held in 2009 undoubtedly represent a further step in the consolidation of democracy in El Salvador. This was not only reflected in the peaceful atmosphere in which both Election Days were held and, overall throughout the election campaign and the extended pre-campaign period, but also given the significant degree of participation registered at the polls. In this sense, the timely and normalised manner in which the different political parties and candidates accepted the results published by the Supreme Electoral Court (*Tribunal Supremo Electoral*, TSE) was highly significant.

All of which would seem to indicate that the country has reached a point from which it can start to overcome some of the electoral regulations that originated, after the war, from the mistrust between former adversaries. This would ease the convergence between the Salvadoran legal framework for elections and international good practices in this field. To this end, the EU EOM recommends in this report that the TSE be independent from the parties and that it professionalises its central administrative structure. Such measures should be followed by a necessary separation between the TSE's judicial and administrative functions as well as an opening up of Polling Stations (*Juntas Receptoras de Voto*, JRV) to greater citizen control. The purpose of such recommendations is to contribute to dispel the perception of political interference in the decisions and operations of the electoral arbiter; a perception that is, to a certain extent fuelled by its current partisan composition at all levels.

Similarly, the Mission believes that the level of maturity demonstrated by Salvadoran democracy in the recent elections would seem to call for the improvement of certain significant regulatory shortcomings. These deficiencies affect both the transparency of political party operations as well as their financing for election campaigns. Such improvements should lead to a more level playing field for the different political alternatives. Therefore, a debate on a Political Party Law is recommended, as is the introduction of spending limits, transparency requirements and an independent auditing of election campaigns. Furthermore, a debate on the regulation of political party access to the media during election campaigns is also recommended.

Finally, the mission considers that it would be convenient to adopt a new, more coherent and exhaustive electoral code, given the numerous isolated amendments introduced over the last few years. The new Electoral Code would provide the

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Salvadoran regulatory framework for elections with greater stability. In order to comply with demands from Salvadoran society regarding specific issues and in accordance with international commitments on elections, the new Electoral Code should also consider, for example, the promotion of a better gender balance within the election administration or the implementation of mechanisms allowing Salvadoran citizens residing abroad to cast their votes.

## **II. INTRODUCTION**

Following an invitation from the Supreme Electoral Court (*Tribunal Supremo Electoral*, TSE) and the Government of the Republic of El Salvador to observe the 2009 general elections, a European Union Election Observation Mission (EU EOM) was deployed in El Salvador on 6 December 2008, remaining in the country until 28 March 2009. **Dr. Luis Yáñez Barnuevo, Chief Observer and Member of the European Parliament** headed the Mission. The Mission deployed 85 observers from 22 European Union Member States, in the country's 14 departments for both electoral processes. Their mandate was to conduct a comprehensive assessment of the electoral processes, in accordance with European Union methodology and the "Declaration of Principles for International Election Observation", commemorated at the United Nations in October 2005.

The EU EOM was joined by a delegation from the European Parliament, led by **Mr. Emilio Menéndez del Valle** for the legislative elections and led by **Mr. José Ignacio Salafranca** for the presidential elections, which included several other Members of the European Parliament. These delegations joined the EU EOM to observe both Election Days and endorse the findings of this report. The EU EOM observed the process until its conclusion, including the consolidation of final results and the resolution of challenges to election results. The EU EOM issued two statements of its preliminary findings and conclusions following each of the Election Days, on 20 January and 17 March, respectively. With this final report, the EU EOM wishes to offer the Mission's detailed assessment on various elements of the recent electoral process. Furthermore, this report includes a series of recommendations based on the results of its observation.

The EU EOM wishes to express its appreciation for the cooperation and warm welcome received from the TSE and other public authorities in the country, as well as by political parties, national and international observation missions and other Salvadoran civil society organisations during the course of its observation work. The EU EOM also extends its gratitude for the support provided by the Delegation of the European Commission in El Salvador, the diplomatic missions of EU Member States and the United Nations Development Program (UNDP) for the duration of the mission.

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### III. POLITICAL BACKGROUND

#### Political Context

In the 18 January 2009 general elections, the Salvadoran people elected the mayors and city councillors of the country's 262 Municipal Councils for three-year terms of office, together with the 84 members of its Legislative Assembly (*Asamblea Legislativa*) and the 20 Salvadoran Members of the Central American Parliament (*Parlamento Centroamericano*, PARLACEN). On 15 March 2009, elections were held for the positions of President and Vice-president of the Republic for five-year terms of office.

The origins of the two main parties contesting these elections are deeply rooted in the civil war that caused the death of 75.000 Salvadorans. Over the last 17 years, since the signing of the Peace Accords, the Nationalist Republican Alliance (*Alianza Republicana Nacionalista*, ARENA) has shifted from the extreme right-wing positions of the past towards a more moderate right-wing stance. Similarly, the Farabundo Martí National Liberation Front (*Frente Farabundo Martí para la Liberación Nacional*, FMLN), structured by five Marxist guerrilla groups during the armed conflict, has since espoused positions more akin to social-democracy in its government programme.

Eight elections have been held since the 1992 Peace Accords, five legislative and municipal polls as well as three presidential polls. Throughout this period, ARENA and the FMLN have gradually crowded out the remaining political parties in the country. ARENA has remained uninterruptedly in power for the last twenty years.

Although the Peace Accords established the basis for political stability and democratisation, following just over fifty years of military-controlled governments (1932-1984) and a twelve-year long civil war, they were not able to lay down the necessary conditions to overcome the deep inequalities of Salvadoran society, which in the context of the Cold War, served as breeding ground for armed conflict. Moreover, the institutions that were responsible for guaranteeing the rule of law have been somewhat burdened by a perception of inefficiency and corruption, which combined with the country's limited sources of income have pushed a growing number of Salvadorans to emigrate.<sup>1</sup> Over the last few years, the increase in internal and social violence, attributed especially to young gang ("mara") members, has placed El Salvador among the three countries with the highest homicide rates in the world.

The persistence of many of these problems, despite a considerable development in infrastructures and a sizeable economic growth during ARENA's years in government, compounded with the significant erosion of ARENA's image after twenty years in power, paved the way for an opposition-led project of "change", geared towards political and social reform.

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<sup>1</sup> It is estimated that practically one-third of Salvadorans live abroad, primarily as illegal immigrants in the United States of America. Although they contribute up to 18% of the country's Gross Domestic Product (GDP), they are not represented politically given the lack of mechanisms to facilitate the out-of-country vote of Salvadoran citizens.

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Faced with the very likely prospect of defeat in the elections, as confirmed by the first opinion polls, ARENA embarked upon a campaign focusing on the FMLN's guerrilla origins and in its hypothetical affinity with the Venezuelan regime headed by President Hugo Chávez. To this end, ARENA resurrected, apparently long overcome, stereotypes from the civil war period, while the FMLN repeatedly maintained, without any factual proof, that only fraud could prevent it from winning the elections.

Even though the campaign was extremely polarised, the legislative, municipal and PARLACEN elections took place without any major incidents. Similarly, the presidential elections, held on 15 March took place in an atmosphere of absolute tranquillity, despite the resulting change of government. For the first time in the country's history, a political party handed over power to a party on the opposite end of the political spectrum. Furthermore, never before had a left-wing oriented party prevailed in a national election.

**Key Political Actors**

Given the presidential nature of the Salvadoran constitutional system, presidential elections tend to generate greater interest than legislative elections. Notwithstanding, six political parties registered for the legislative and municipal elections (ARENA, FMLN, PCN, PDC, CD and FDR), while only the first four, initially presented candidates for the 15 March presidential elections. In early February, with the campaign in full swing, the PCN and PDC withdrew their candidates, aligning themselves with the ARENA candidates. On the other hand, after withdrawing from the presidential race the CD chose to support the FMLN candidates. These withdrawals resulted in an even more polarised campaign between the only two remaining political contenders.

Major Roberto D'Abuisson founded ARENA in 1981. The party won a relative majority in practically every election to the Legislative Assembly from 1989 to these recent elections as well as holding the Presidency throughout this same period. In the previous elections, it obtained 34 seats (compared to 32 in the recent elections) out of the 84 seats that comprise the legislative body, and over half of the Municipal Councils (as compared to somewhat less than half in the recent elections.)

The FMLN was founded in 1980, from the fusion of five different left-wing armed movements. It competed in its first elections as a political party in 1994 and obtained nearly a quarter of the Municipal Councils in the previous elections (compared to more than a third in the recent elections) and 32 seats in the Legislative Assembly (it won 35 in these last elections.)

The National Conciliation Party (*Partido de Conciliación Nacional*, PCN) was founded in 1961 and held on to positions of power during the sixties. Although its importance has dwindled in the last few years, this right-wing party had ten seats (now eleven) in the Legislative Assembly between 2006 and 2009, where it has usually supported ARENA.

The Christian Democratic Party (*Partido Demócrata Cristiano*, PDC), is the patriarch of Salvadoran political parties, having been founded in 1960. Although the PDC was the

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strongest party in the country for several decades, it only controlled five seats in the previous legislature, a result that it repeated in the recent elections. It has voted alongside ARENA on many occasions.

Democratic Change (*Cambio Democrático*, CD) is a centrist party, founded in 1998, combining a social-christian and social-democrat orientation. It gained one single seat in the elections held last January, compared to three in the past legislative period. CD did not present any candidates to the presidential race in 2009, expressing its support for the FMLN candidate.

The Revolutionary Democratic Front (*Frente Democrático Revolucionario*, FDR) was born from a recent schism within the ranks of the FMLN. It only competed in the legislative and municipal elections, and did not obtain the necessary number of votes to maintain its status as a political party. Although the FDR defines itself as having a social-democratic orientation, it supported ARENA in the presidential poll.

Considering the majority of the electorate's desire to put an end to decades of entrenched polarisation, the main political parties identified the need to instil new life into a political scene that had been practically stagnant for the last twenty years. Indeed, they attempted to moderate and update their image by nominating at least one non-orthodox candidate, without an established party profile, among their respective candidates for president and vice-president.

Rodrigo Ávila, ARENA's candidate to the presidency, is a well-known personality, having been a former director of the National Civil Police (*Policía Nacional Civil*, PNC) and perceived as being a representative of the party's traditional positions. Moreover, Arturo Zablah, ARENA's candidate for vice-president, had unsuccessfully attempted to create a coalition of opposition parties (including the FMLN) to remove ARENA from power, having been discarded as a potential presidential candidate by the FMLN in 2007. Therefore, his presence on the ARENA presidential ticket was interpreted as an endeavour to open up the party towards the centre-left electorate.

Likewise, Mauricio Funes, the FMLN candidate to the presidency, owes his considerable popularity to his work as an independent journalist, renowned for his criticism of ARENA governments. Not an FMLN party-member, when he was nominated, his campaign has distinguished itself in its clear defence of social-democratic values. Funes benefited from the generalised desire for change in an environment strongly influenced by Barack Obama's victory in the United States of America. The FMLN candidate for vice-president, Salvador Sánchez Cerén, the last of the FMLN's historic guerrilla leaders and generally perceived as representing the more "orthodox" wing of the FMLN, was less visible throughout the campaign.

Among the candidates who withdrew from the presidential elections, neither the PCN presidential candidate, Tomás Chévez, an evangelical financier, nor its candidate for vice-president, Rafael Garciaguirre, a former army officer and police commander, were members of the PCN prior to their nomination as candidates. The PDC's presidential candidate, Carlos Rivas Zamora, the former FMLN mayor of San Salvador between 2003 and 2006, only joined the PDC in 2008. Likewise, Merlin Peña, the only woman

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candidate among the four presidential tickets, was not a member of the party until her nomination as PDC's candidate for vice-president.

#### **IV. LEGAL ISSUES**

##### **The Legal Framework**

The legal framework for elections in El Salvador is contained within the following legal instruments:<sup>2</sup> the Constitution of the Republic of El Salvador; the Electoral Code; the National Registry of Natural Persons Law; the Regulation of the Organic Law on the National Registry of Natural Persons; the Special Regulations for the Casting of Residential Votes (2003) and the General Regulation for Election Observation.

Other special norms which can be applied and which were enacted by the Legislative Assembly soon before these elections are: Decree 749, of 5 November 2008, establishing the obligation to sign and stamp ballot papers; the Special Transitory Law regulating the procedures allowing Salvadorans citizens residing abroad, and registered in the Electoral Register, to vote in the 2009 Presidential Elections, of 11 February 2009 and Decree 831, of 25 February 2009, which contains the Transitory Regulations for the election of the President and Vice-president of the Republic, establishing the legitimacy of Closing and Counting Protocols that display two signatures.

The Salvadoran legal framework presents a generally sufficient, although incomplete, basis for the holding of democratic and transparent elections, despite the broad participation of political parties in all of the election administration's structures and the recognition of the legal possibility of challenging and appealing the election management body's decisions through administrative proceedings. Indeed, the Salvadoran legal framework contains significant shortcomings, some of which were perceptible in the recent electoral process. Thus, for example, the alleged cases of tied votes in municipal elections, or the procedures for the withdrawal of presidential candidates during the election campaign, together with other insufficiencies, which are apparent in the successive amendments of the Electoral Code (48 since 1992) which have also contributed to transform the Electoral Code into a relatively incoherent and unsystematic legal instrument.

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<sup>2</sup> *Constitución de la República de El Salvador*, enacted on 15/12/1983, last reformed on 2/10/2003; *Código Electoral*, enacted on 14/12/1992, amended 48 times, the last being on 28/11/2008; *Disposición Especial para la Emisión del Voto Residencial*, in effect as of 18/11/2003, amended on 13/10/2005; the Telecommunications Law (*Ley de Telecomunicaciones*), enacted on 6/11/1997, last amended on 12/02/2007; *Reglamento para la Observación Electoral*, issued on 26/11/2008; the articles regarding Election Fraud in the Penal Code (*Código Penal*); the *Ley Transitoria Especial Reguladora de los Procedimientos para el Ejercicio Del Voto de los Salvadoreños Residentes en el Exterior, Inscritos en el Registro Electoral, para las Elecciones de Presidente y Vicepresidente del Año 2009*, enacted through Decree number 818, dated 13/02/2009; the *Disposiciones Transitorias para la Elección de Presidente y Vicepresidente de la República a realizarse el 15/03/2009*, enacted on 25/02/2009 (regarding the legitimacy of Closing and Counting Protocols with two signatures); the *Ley del Registro Nacional de Personas Naturales*, enacted on 22/12/1995; and the *Reglamento de la Ley Orgánica del Registro Nacional de las Personas Naturales*, enacted on 23/05/2000, reformed on 4/10/2006.

The EU EOM considers that the most important deficiencies of the Electoral Code are the following: the lack of and/or precarious regulation of the private and public financing of political parties, the insufficient regulation of election campaigns and the lack of auditing rules for campaign spending. The latter implies a total lack of transparency in these matters, but also an element of inequality regarding the conditions under which the different contenders compete. Furthermore, the Mission also noted a lack of comprehensive regulations on political party structure and operations, the absence of a media law, the weak and vague regulation of the TSE's specific functions and competencies as well as its decision-making procedures and the deficient regulation of various procedural aspects within the Electoral Code. In most cases, the enactment of newly drafted specific laws will be the only possible remedy, complemented, in some cases, by regulations that develop them.<sup>3</sup>

Given the number and importance of the aforementioned shortcomings, it is recommended that the Legislative Assembly go beyond a mere amendment of the current Code and considers debating and enacting a new Electoral Code. The new Code's objective, together with the previously mentioned specific laws, is to establish an adequate legal basis for future electoral processes, bringing it further in line with international commitments for democratic elections.

Moreover, certain important measures, which are currently not included in the Electoral Code, should be incorporated in the future. These measures include the development of mechanisms allowing for out-of-country voting, the nation-wide application of residential voting and the introduction of instruments to correct gender imbalances in the TSE's collegiate body as well as in its temporary structures (JED, JEM y JRV) or a specific focus on disabled or illiterate voters. Another equally important step would be the establishment of procedures enabling soldiers and policeman on duty on Election Day to vote, as well as hospitalised patients and persons detained on remand that have not been convicted.

Together with the legislative effort, it would be beneficial to work, based on a broad political consensus, on the approval of the necessary constitutional reforms to allow for greater citizen control in the electoral management body's structures, both permanent and temporary. This process should help to avoid potential sources of conflict between its members' arbitration functions and their political allegiances, as well as guaranteeing the necessary separation of the TSE's administrative and judicial functions.

The amendments of the Electoral Code that were introduced for the recent election process, the latest of which was issued 18 days prior to the presidential elections, enabled Salvadorans residing abroad to vote and also clarified the criteria for the validity of ballots as well as Closing and Counting Protocols. Nonetheless, the Decree which allowed Salvadorans who obtained their national identity card (*Documento Único*

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<sup>3</sup> Different draft legislations were considered in the past, such as the draft legislation on the Electoral Code, on Electoral Procedures, on Political Parties, and on a new electoral institutionalization, none of which were finally enacted.

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*de Identidad*, DUI) in the United States of America to participate in the presidential elections, had a minimal repercussion in practice given the requirement that they personally cast their ballot in El Salvador. The Mission recommends that the effective possibility of casting their ballot be granted to all Salvadoran citizens through the network of Consulates and/ or other state bodies outside El Salvador, thus strengthening the application of the right of universal suffrage as enshrined in the Salvadoran Constitution, and in line with international principles of inclusiveness and citizen participation.

Despite the positive, yet limited, impact that these last minute amendments had on the electoral process, it is recommended that amendments to the Electoral Code be avoided so close to polling in future elections. International good practice advocates for the determination of a cut-off date, which may coincide with the TSE's call for elections,<sup>4</sup> for the introduction of legislative modifications to the election process, thereby strengthening the principle of legal certainty.

The Constitution of the Republic of El Salvador defines the Salvadoran state as sovereign, republican, democratic and representative. The Constitution stipulates that the political system is pluralist and expressed through political parties, the only instrument through which to exercise the representation of citizens in government. The Constitution also recognises the classic separation of powers (legislative, executive and judiciary), that exercise public power independently and within the limits of their legally and constitutionally established functions.

The system of government is of a presidential nature, as is the case in most of the countries in the region. The President is elected for a five-year term, and cannot be re-elected; he is the Head of State and Commander-in-chief of the Armed Forces as well as being responsible for appointing and chairing the Council of Ministers. The legislative branch is represented by the Legislative Assembly (*Asamblea Legislativa*), which is formed by 84 members ("*diputados*"), elected by departmental constituencies for a three-year mandate; without any limits on re-election. Finally, the judiciary is represented, at its highest level, by the Supreme Court of Justice (*Corte Suprema de Justicia*, CSJ), formed by 15 magistrates elected by the Legislative Assembly. Administratively, the country is divided into 14 departments and 262 municipalities.

The Constitution recognises the right of insurrection to redress the constitutional order if it has been altered or if the principle of non re-election of presidents is violated. Basic political and civil rights, such as the right to political participation and expression are also guaranteed. The Constitution defines the composition of the electoral management body, the Supreme Electoral Court (*Tribunal Supremo Electoral*, TSE).

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<sup>4</sup> The TSE calls for elections at least 120 days in advance of the designated Election Day, Article 224, Electoral Code.

## **Electoral System**

The Electoral Code establishes that an absolute majority (one more than half of the valid votes cast) elects the President and Vice-president of the Republic in a first round election, or by simple majority in a second round. The constituency for the presidential elections is a single nation-wide constituency.

The 84 members of the Legislative Assembly are elected in constituencies that correspond to the country's 14 departments, for a three-year term. This is, comparatively, an unusually short mandate, which tends to generate a feeling of permanent election campaign, which is not necessarily beneficial for good governance. Each department elects a minimum of three representatives to the Legislative Assembly, together with their respective substitutes. The remaining seats are distributed among the different departments, according to the figures of resident population in the latest national census, based on the calculation of the national population quotient.<sup>5</sup> The electoral system is a proportional representation system with closed lists.

A simple majority elects Mayors (*Alcaldes*), Comptrollers (*Síndicos*) and Council Members (*Regidores*): the winner in each of the 262 municipal constituencies is the candidate who obtains the largest number of votes. Mandates in these cases are also for three-year terms. It is worth recalling that the current system of representation for municipal elections in El Salvador is purely majoritarian, totally excluding the participation of defeated political parties within municipal bodies. This feature was criticised by most political parties during the campaign.

The 1992 population census was used in these past elections, instead of the more recent one from 2007, to calculate the number of Comptrollers and City Council Members as well as the number of seats assigned to each department in the Legislative Assembly. This decision produced several imbalances in terms of the equality of the vote, given the gap between the data from the 1992 census and the demographic reality of El Salvador 17 years later. The EU EOM thereby recommends that the more recent census available be used for future elections, as is prescribed in the Electoral Code. Furthermore, the Mission considers that it would be advisable for the number of seats assigned to each department to reflect the real demographic distribution, in accordance with international commitments that suggest that each vote should have approximately the same value.

## **Regional and International Commitments**

El Salvador is a Member State of the United Nations, and is a party to the International Covenant for Civil and Political Rights as well as the American Conventions on Human Rights (1969). Furthermore, El Salvador has ratified the Convention on the Elimination of All Forms of Discrimination against Women and has signed the Inter-American Democratic Charter (2001).

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<sup>5</sup> The national population quotient is obtained by dividing the number of inhabitants, according to the latest national population census, by the number of seats to be elected (Article. 13, Electoral Code).

## **Electoral Regulations**

According to the Electoral Code (Article 80/9), the TSE can issue any regulation that it considers necessary for the development of electoral norms. Based on this authority, the TSE approved its own Internal Working Regulation (*Reglamento Interno de Trabajo*) in 2007. The preceding collegiate body (1999-2004) approved a Regulation on Election Campaigns (*Reglamento sobre Campañas Electorales*) which never fulfilled the requirement of formal publication, and thus never came into force. For the 2009 election process, the TSE decided to issue a General Regulation for Election Observation.

The TSE has shied from using these normative powers of an administrative nature. It could have employed them to greater effect to remedy some of the Electoral Code's legal shortcomings. Instead, the TSE has generally limited itself to exercise its regulatory powers through simple resolutions, of an administrative nature, adopted by a simple majority of votes of TSE Magistrates, instead of approving regulations, such as those mentioned above, which require a qualified majority that is often difficult to obtain due to the TSE's partisan composition.

## **Electoral Justice**

The TSE, in its capacity as highest electoral authority, is the first and only instance to hear all appeals against its own decisions and resolutions, in accordance with the Constitution and the Electoral Code. Therefore, there is no further external appeal against the TSE's resolutions other than, in certain cases, a petition for the enforcement of constitutional rights (*recurso de amparo*) before the Supreme Court of Justice, alleging the violation of fundamental rights.

As for administrative proceedings, the Electoral Code establishes a procedure to process challenges regarding Election Day events (petitions for ballot box annulment, challenges against the election or against the final results). These appeals, which can be filed by political party legal representatives, are decided upon by a qualified majority vote of the TSE Magistrates, within no more than eight days, there is no further appeal against the TSE's decision.

The decisions of temporary electoral bodies –the Municipal and Departmental Election Boards (*Juntas Electorales Municipales*, JED; and *Juntas Electorales Departamentales*, JEM) – can be appealed and are processed by the TSE (petition for appeal and petition for revision). Similarly, their resolution requires a qualified majority of the votes of the collegiate body and once issued they exhaust the possibility of further administrative appeals. The Electoral Code does not establish a specific deadline for the TSE to reach a decision in such cases.

## V. ELECTION ADMINISTRATION

### Structure and Composition of the Election Administration

The origins of the current composition of the highest electoral authority in El Salvador, the Supreme Electoral Court, are to be found in the 1983 constitutional reform. Prior to this reform, it was composed of three members, one for each of the powers of the State. Following the 1983 reform, its structure became partisan, including one representative proposed by each of the three most voted political parties in the presidential elections and elected by the Legislative Assembly. Two additional Magistrates, proposed by the Supreme Court of Justice joined the TSE after the 1991 reform. These new Magistrates must be free from party affiliation, and are elected by a two-thirds majority of the Legislative Assembly. Hence, the TSE responsible for the organisation of the recent elections was composed of five Magistrates (which included representatives of the ARENA, FMLN and PCN parties) and five Substitute Magistrates.<sup>6</sup>

This partisan composition of the TSE was selected due to the lack of trust among political parties regarding the independence of magistrates appointed by government bodies, which were practically all controlled by the incumbent party and its allies. The shift towards a partisan TSE allowed for reciprocal political supervision, but introduced a further dysfunctional element. The institution's political bias, as reflected in some decisions taken by the TSE before and after the beginning of the campaign, was evident during the recent election period.

The TSE is an independent, permanent and collegiate body, elected for a five-year term, with the possibility of re-election. The political party that won the previous presidential election selects the TSE President. The TSE's partisan nature led to the formation of a bloc, uniting the ARENA and PCN representatives with a Magistrate from the Supreme Court of Justice. Their majority position allowed them to wield control over the electoral process during this mandate. This situation left the FMLN selected Magistrate and the second Magistrate designated by the Supreme Court of Justice in a minority. Some of the more significant electoral resolutions, such as the separation of dates for the presidential and legislative elections, or the deregistration of the PCN presidential ticket, against the will of the candidates themselves, were approved exclusively with the favourable votes of the three magistrates in the majority bloc.

The last election of TSE Magistrates, which took place in 2004, in a Legislative Assembly where no single party had an absolute majority, was relatively controversial. The election of the third member selected by the political parties, the PCN Magistrate, stirred great criticism and his legitimacy as TSE Magistrate was challenged.<sup>7</sup>

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<sup>6</sup> Due to the controversy regarding the appointment of the PCN Magistrate, both PDC and CD were awarded a Substitute Magistrate each (*see note 10*).

<sup>7</sup> The PCN did not obtain the sufficient percentage of votes (3% of valid votes cast), neither was it the third most voted party –necessary criteria to select a Magistrate according to the Constitution and the Electoral Code. Based on the principles of legality and popular representation, the TSE decided not to proceed with the deregistration of the PCN and PDC as parties, for not having obtained the minimum number of votes required by law. The Legislative Assembly enacted the Rescue Decree (*Decreto de*  
*This report was produced by the European Union Election Observation Mission (EU EOM) and presents the EU EOM's findings and conclusions on the General Elections held in El Salvador in 2009. The contents of this report have not been adopted or in any way approved by the European Commission and should not be relied upon as a statement of the Commission. The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.*

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The partisan nature of the TSE is reproduced throughout its structures, at the central level –in its seven different directorates together with their various sub-directorates, units and departments- as well as in the TSE’s temporary bodies – Polling Stations, Municipal and Departmental Boards. At every level, political party representatives manage the work of Salvadoran electoral bodies, a situation that often leads to communication problems as well as flaws in coordination and a lack of cooperation within the election administration.

At the time, given the mutual mistrust among the former civil war contenders, this system was considered a positive evolution in the TSE’s organisation, facilitating the effective supervision of the election administration’s work by the political parties. However, it has since become anachronistic and inefficient, allowing political interests to prevail too frequently, in the adoption of decisions that should be taken on purely technical and legal grounds, with the neutrality that would be expected from an electoral arbiter.

Therefore, in line with international good practice, the EU EOM recommends that the TSE’s permanent and temporary structures and bodies be independent and non-partisan. This will require selecting magistrates recognised for their independence and professional prestige, as well as opening up the temporary election administration bodies to citizens. It will also help to professionalise a group of permanent technical experts at the organization’s service, which should contribute to preserve accumulated experience in the organisation of election processes. This reform would undoubtedly promote public confidence in the TSE’s decisions, which are at present perceived as being excessively dependant on party interests. Furthermore, such a reform will entail amending the Constitution, which requires a simple majority of the incumbent Legislative Assembly followed by its ratification by a qualified majority of the new Legislative Assembly.

The Constitution of the Republic of El Salvador (Article 208) vaguely defines the competences of the TSE; referring to specific laws the regulation of the organisation of the elections, the counting, the supervision of polling, the political debt, as well as administrative sanctions for electoral concerns, among others.

Structurally, the TSE combines the administrative function of election management with the judicial function. Furthermore, the TSE is the last instance to hear appeals against its own decisions.<sup>8</sup> This concentration of functions in one body implies that its

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*Salvataje*) in January 2005, thus salvaging these two political parties. The fact that the PCN was allowed to survive as a party enabled the Legislative Assembly to, irregularly, appoint a representative of this party, as opposed to a representative of the CDU/ PDC coalition, that had come in third place and which had the right to present a candidate for the position of TSE Magistrate. FESPAD filed several complaints against the irregular appointment of the PCN Magistrate before the Constitutional Chamber of the Supreme Court of Justice. The CSJ determined that this Magistrate was elected in accordance with the law.

<sup>8</sup> As a last course of appeal against alleged violations of constitutional rights, the law allows for a petition for the enforcement of constitutional rights before the Supreme Court of Justice.

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magistrates are both judges and parties, thus limiting their independence when it comes to enacting judicial resolutions on their own administrative decisions, especially when these have political repercussions. Therefore, the EU EOM recommends the separation of the TSE's judicial and administrative functions. This could be achieved by delegating the purely organisational and administrative functions to a Permanent Directorate, within the Court itself. This Directorate would have an essentially executive nature, headed by specialised officials who could thereby help to preserve institutional memory for the organisation of elections.

The TSE, as the highest electoral authority, has a significant role to play in supervising compliance with the Salvadoran constitutional framework and electoral legislation,<sup>9</sup> as well as for bringing actions that constitute crimes within its competences to the common courts.<sup>10</sup> In accordance with the Electoral Code, the TSE must also ensure compliance with its own agreements and provisions; it is also endowed with the authority to apply administrative sanctions against violations of the Electoral Code. In the recent election process, the TSE was very reluctant to use its sanctioning powers, even when faced with blatant violations of the Electoral Code, as occurred with some parties' breaches of the established timeframe for the election campaign or with the participation in the campaign of organisations that were not formally constituted as political parties. In order for the TSE to reaffirm itself in the future as the highest electoral authority, it should adopt a stricter and more diligent attitude in the investigation and sanctioning of violations that come to its attention.

### **Administration of the Elections**

The TSE called for legislative, municipal and PARLACEN elections on 1 September 2008, setting the date for 18 January 2009, and 15 March 2009 for the presidential elections.<sup>11</sup> The call for elections was done within the legal deadlines, although according to the main opposition party at the time, this call was brought forward 15 days in order to avoid using the 2007 census, in case it were to be officially published within this period.

These four elections coincide every 15 years, and the TSE has the discretionary administrative authority to decide whether the actual Election Days will coincide. In this recent process, the bloc of magistrates in the majority determined that it should be: "the voters who decide, separately, whether to unify the powers of the State in one single

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<sup>9</sup> "As a collegiate body the Court is responsible for ensuring compliance with the Constitution and Laws which guarantee the rights of citizens and political parties to political participation and to organise themselves", Article 79/1 of the Electoral Code.

<sup>10</sup> Article 79/10 and 12, of the Electoral Code.

<sup>11</sup> The TSE's call for elections did not set any dates for possible re-elections, as occurred in two municipalities. The TSE decided to repeat the municipal elections on 25 of January in San Isidro, because of the suspension of the January elections in the municipality of San Isidro, in Cabañas, due to the alleged mobilisation of voters from other municipalities. Similarly, municipal elections were repeated on 1 February in San Agustín after a tied vote in the municipal results between ARENA and the FMLN in San Agustín, Usulután.



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political group, or if on the contrary, they establish a balance in the exercise of these powers, by leaving them in the hands of more than one of these groups.”<sup>12</sup> This extremely important electoral decision by the TSE was taken, as mentioned previously, by a simple majority of votes, without a consensus among all the magistrates of the collegiate body. The purpose of this decision, according to the main opposition party at the time, was on the one hand to facilitate an alliance between right-wing parties (ARENA and PCN) for the first round of the presidential elections, and on the other hand to compromise the financing of the FMLN’s electoral campaign, by extending it over two periods. This decision was also criticised because by splitting the elections the cost of organising the electoral process increased.<sup>13</sup>

However, the separation of elections, which the TSE justified, among others reasons, by appealing to the principle of the separation of powers did not take into account the necessary separation of ballot papers for the legislative and PARLACEN elections. Three different elections were held on 18 January with only two ballot papers, one for the election of Members of the Legislative Assembly and another for the Municipal Councils. The PARLACEN seats were assigned based on the results obtained in the legislative election. Therefore, voters were unable to vote for different parties for the Legislative Assembly and the PARLACEN, thus contradicting the requirement of direct suffrage established in PARLACEN’s Founding Treaty. Evidently, this limitation does not contribute to strengthen citizen perception as to the importance of this regional parliament within the process of regional integration in Central America. A separate ballot paper for the PARLACEN elections would therefore be a very positive step for future elections.

The TSE is responsible for calling for, organising, managing and supervising electoral processes as well as carrying out the preliminary and final tabulation of results. The administration of elections is broken down into seven directorates and multiple sub-directorates, units and departments within the TSE,<sup>14</sup> as well as its temporary organs – 14 Departmental Election Boards (*Juntas Electorales Departamentales*, JED), 262 Municipal Election Boards (*Juntas Electorales Municipales*, JEM) and 9,533 Polling Stations (*Juntas Receptoras de Votos*, JRV). All of the electoral structures are staffed along partisan lines, according to the provisions of the Electoral Code, thus ensuring constant vigilance of every phase of the process by political parties. However, this structure is often responsible for faulty communications and cooperation between different departments due to politically motivated differences between their staff members. During the 2009 electoral process, ARENA representatives headed four of the

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<sup>12</sup> TSE Resolution enacted on 15/06/2007 on the separation of the 2009 elections.

<sup>13</sup> The Legislative Assembly approved a budget of 23 million USD for the 2009 elections.

<sup>14</sup> The TSE’s central and permanent structure is headed by the Collegiate Body, and further comprises a: General Secretariat; a General Comptroller’s Office subdivided into the departments of Administrative Financial Audits and System Audits, an Executive Directorate with three dependent organs – the Communications Unit, the Strategic Planning and Quality Control Unit and the Information Technology Unit; a Judicial Directorate; the Administration and Finance Directorate; the Training and Civic Education Directorate; the Electoral Organisation Directorate; the Electoral Register Directorate and the Strengthening of Democratic Institutions Directorate.

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TSE's seven directorates (Executive Directorate, Administration and Finance Directorate, Electoral Organisation Directorate and the Electoral Register Directorate), while two were headed by FMLN representatives (Electoral Training Directorate and Strengthening of Democratic Institutions Directorate). This situation exemplifies ARENA's control over the process and was reflected, to a certain extent, in the public perception of the TSE as an institution lacking in independence and neutrality.

As mentioned previously, on certain occasions the partisan nature of the management of the TSE's various directorates and departments proved to be an obstacle to the necessary level of collaboration and cooperation within the TSE structure. Indeed, the EU EOM observed that the TSE's Systems Audit Department (headed by an FMLN representative) had insufficient access to the computerised protocol transmission systems used for the announcement of preliminary results. Moreover, this compromised its capacity to carry out its auditing functions.

The TSE has a permanent staff of approximately 500 full-time employees, of which 117 are magistrates' support staff. The remaining 383 officials are spread out among the various directorates, sub-directorates, units and departments. For these last elections, the TSE temporarily employed 2,625 additional staff to work in the Electoral Organisation Directorate, 910 persons for training projects and 355 to assist in the verification of voter details on the Electoral Register. The Legislative Assembly approved a budget of 23,014,435 USD for the 2009 elections.

The TSE's temporary bodies (JEDs and JEMs) are composed of a maximum of five and a minimum of three members appointed by the TSE.<sup>15</sup> Of these, four members are proposed by the political parties with the highest number of votes in the previous elections and the fifth is determined by drawing lots between the rest of the parties or coalitions that participate in the elections. The TSE is required to observe the principle of equity in the appointment of all the different positions in all of its bodies.<sup>16</sup> The majority of members of these temporary bodies are required to be present for these bodies to function and take decisions. The JEDs and JEMs must be constituted prior to the elections –approximately three months and a half for the JEDs and two months and a half for the JEMs- allowing them some time to prepare, although these timeframes were considered insufficient by the bodies themselves.

The Electoral Organisation Directorate (*Dirección de Organización Electoral*, DOE), operates permanently at the central level and is responsible for all of the electoral logistics, it accumulates experience from previous elections and has a well-organised structure, which enabled it to perform its duties in an efficient and timely manner. Sub-

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<sup>15</sup> Five, or three, members and five, or three, substitute members, Article 109, Electoral Code. For the 18 January 2009 elections, approximately 49,045 members (not including substitutes) participated in the elections. For the presidential elections in March, the figure shrank to 38,172 given that the number of members of temporary bodies was reduced from five to four.

<sup>16</sup> "The TSE will distribute equitably between the different proposals, the positions of president, secretary, first, second and third officers, according to a percentile distribution equivalent to 20% of each position for each proposing entity." Article 109, Electoral Code.

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delegates responsible for implementing logistic and operational directives represent the DOE at the departmental and municipal level. This structure was on occasions operationally weak due to the faulty communication that was frequently observed between the DOE and the JEDs and JEMs, which often operated in a parallel and poorly integrated manner.

For future elections, it is suggested that financial and material conditions be improved for JEMs and JEDs, to ensure, together with the advisable nation-wide extension of the residential vote, a more efficient management of the logistical organisation at the local level. Optimising communications between the central and local level and improving the cooperation between them is also recommended. Increasing the timeframe for the operation of JEDs and JEMs could also have a positive effect on the development of electoral organisation at the local level.

JRV Members are appointed by the TSE thirty days before the elections and their composition echoes that of the other temporary bodies.<sup>17</sup> The JRVs are operational for as long as is necessary to fulfil their functions, which begin on Election Day with the setting up of the Polling Stations and conclude with the counting of ballots at the Polling Stations and the handover of electoral materials, including the Closing and Counting Protocols to the relevant bodies. The Training and Civic Education Directorate trained electoral trainers who in turn organised training sessions for Polling Station staff. Similarly, political party representatives were invited to attend TSE training sessions and later assisted in the training of the approximately 76,000 party agents that supervised JRVs in the four elections.

The TSE considered that the training of Polling Station staff was a priority. To this end, it distributed brochures and other educational materials as well as organising training sessions which detailed the voting and counting procedures as well as how to fill in the Closing and Counting Protocols, a necessary requirement for the TSE's preliminary tabulation. For the presidential elections, the Training Directorate repeated the training sessions that it had already imparted given that, to a certain extent, the composition of the Polling Stations had changed. Political parties played an important role in the training of their party agents as well as their Polling Station staff. Unsurprisingly, the different training provided by political parties to their representatives did not conform to any criteria of uniformity, as each party adjusted their training to suit their needs/strategies for the Election Days. Notwithstanding, the EU EOM recommends that the TSE strengthen its training capabilities for future elections, to ensure the greatest possible degree of homogeneity in the information received, leaving only the training of party agents in the hands of political parties. This will become even more crucial given

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<sup>17</sup> For the January 2009 elections, the composition of JRVs followed the Electoral Code (Article 117): five members of whom four members and their substitutes represent the most voted political parties in the past elections and a fifth member selected by a draw carried out by the TSE among the remaining political parties and coalitions that compete in the elections. For the March 2009 elections, the TSE decided to compose JRVs with four members: two from each of the political parties presenting candidates to the presidential election. This composition, which is not contemplated in the Electoral Code, was the result of a political agreement between ARENA and the FMLN.

that the number of Polling Station staff should increase with the desirable nation-wide extension of residential voting.

The legal instrument, which allowed Polling Station staff and political party agents who were carrying out their duties in Polling Stations that were not within the municipalities where they were registered to be added to JRV Voter Lists, generated enormous controversy, especially in the 18 January municipal and legislative elections. In this manner, approximately 100,000 people could have been added to Voter Lists allowing them to vote in municipalities where they were not registered, and in which under normal circumstances they would not have been authorised to vote. Political parties have used and abused this authorisation; in such a manner, that the more organised parties have been able to place and add voters to Voter Lists in strategic municipalities. This practice, however legal, allows for the unjustified and politically motivated relocation of large numbers of voters. The EU EOM recommends that the possibility of adding voters to the Voter Lists of municipalities other than those they are registered in, especially for municipal or legislative elections, be limited exclusively to very specific and justified cases. Police and military personnel who are on duty outside their municipalities on Election Day could be one of those exceptions, although always under effective safeguards to prevent the possible political abuse of this mechanism.

The EU EOM observed a significant improvement in the administration of the elections between 18 January and 15 March. In that two-month period, the TSE decided to adopt measures to iron out some of the problems identified in the first election exercise and which were liable of being minimised in the short term. Some of these shortcomings had been highlighted in the EU EOMs Preliminary Statement. The TSE's proactive attitude gave a positive impulse to the process and produced visible improvements, such as the drastic reduction in delayed JRV openings, compared what had been observed in January. Other improvements affected the secrecy of the vote, which was further guaranteed by adding curtains to polling booths and above all the greater speed and security in the processing of preliminary results for the presidential elections.

Another difference observed between the January and March elections was the new composition of the temporary bodies (JED, JEM and JRV), from five members, representing different political parties, to just four members, two from each party still in the running –ARENA and the FMLN. This bi-partisan composition which is not contemplated within the Electoral Code<sup>18</sup> and is the result of a political agreement between both parties, was initially viewed with some degree of suspicion among JEM and JED members who feared the risk of paralysis within JRVs' decision-making processes in the case of tied votes. These fears did not materialise themselves and JRV members exhibited a strong level of commitment, maturity, and above all, consensus throughout Election Day. The relative simplicity of the proceedings for the presidential election (just one ballot paper with two options) and the transparency of the process, especially during Election Day (with the presence of political party agents in the vast majority of JRVs) contributed to dispel the initial fears that political tension in JRVs

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<sup>18</sup> Article 118, paragraph 3, of the Electoral Code prohibits the composition of JRVs with two or more representatives from one political party or coalition.

could destabilise the process. The distribution of Closing and Counting Protocols to political party agents was also considered a positive contribution, as was the presence in many Polling Centres of representatives from the TSE, JED, JEM, the General Prosecutor's Office and the Electoral Review Board.

The JEDs, JEMs and JRVs are under the authority of the TSE and must follow the directives and agreements of the collegiate body. Nevertheless, they are also endowed with significant discretion regarding their decisions and can adopt whatever agreements they consider necessary for the proper running of the elections within their area of responsibility, always within the boundaries of the law. The EU EOM observed that communications between the collegiate body and the temporary bodies were defective, generating certain doubts and difficulties in the implementation of instructions. To improve the operation and communications between the different structures it would be advisable to strengthen the TSE's managerial functions. In the specific case of these past elections, the Court could have issued directives to the JEDs with clear and uniform instructions for their implementation, in matters such as the national identity card (DUI)<sup>19</sup> or measures to reduce the presence of political party sympathisers around Polling Centres. These were nation-wide problems that could have been mitigated with the implementation of uniform rules for the entire country.

### **The Electoral Review Board**

Beyond the aforementioned temporary supervisory capacity that the Electoral Code bestows on political parties to supervise the electoral process,<sup>20</sup> the Code establishes a permanent supervisory body for the entire electoral process, the Electoral Review Board (*Junta de Vigilancia Electoral, JVE*), composed of representatives of every political party legally registered before the TSE. The JVE, which in the recent electoral process included representatives from six political parties – ARENA, FMLN, PCN, PDC, FDR and CD –, is responsible for supervising the TSE's activities and operations, as well as those of its temporary organs. The TSE may call upon the JVE to carry out projects, of a consultative or verification nature, that are relevant to the electoral process.<sup>21</sup>

The Electoral Code awards broad supervisory capacities to the JVE, above all the right to supervise the organisation, update and purging of the Electoral Register, as well as the issuing and distribution of the national identity card (*Documento Único de Identidad*

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<sup>19</sup> Some persons modified their data in the RNPN after the Electoral Register was closed, therefore, some DUI photographs did not correspond to the photographs on the Voter List. In such cases, the TSE could have clarified that if the person on the photograph was the same, and the modification did not affect their municipality of residence (in the case of municipal elections), the Polling Station staff, could, once they verified the existence of all the other requirements allowing for the vote, allow these voters to cast their vote. Some JEDs reach similar agreements.

<sup>20</sup> Article 130, Electoral Code – all legally registered party or coalition has a temporary right to supervise the election process, starting from the call for elections. Political parties have the right to ensure that all legal provisions of the electoral process are complied with, and to denounce any irregularity that they may observe.

<sup>21</sup> Article 114, Electoral Code.

DUI) in the country and abroad. Another significant function is the power granted to technical experts appointed by each political party to permanently supervise and audit the Electoral Register's computer systems. These technical experts are also responsible for supervising the preliminary and final tabulation procedures at the National Electoral Result Data Processing Centre (*Centro Nacional de Procesamiento de Resultados Electorales*, CNPRE). The JVE's broad supervisory competences have not been fully developed due to the limited degree of cooperation afforded by various institutions as well as its inherently redundant nature, given the current partisan composition of the TSE. Indeed, the access to TSE information was not complete and transparent. Moreover, audits of the Electoral Register and its computer systems should be improved in the future. If the recommended proposal to increase citizen participation and control in TSE structures, the JVE could eventually become a vital instrument in political party supervision of the electoral process and some of its main components –the Electoral Register, the issuing of DUIs, as well as the preliminary and final result tabulations.

### **The Electoral Attorney's Office**

The Electoral Attorney (*Fiscal Electoral*) is under the authority of the General Prosecutor's Office (*Fiscalía General de la República*), and is appointed according to the provisions stipulated in the Organic Law of the Public Prosecutor's Office (*Ley Orgánica del Ministerio Público*). The Electoral Attorney's actions are subject to the provisions contained in the Constitution, the Electoral Code and the TSE's decisions. The Electoral Attorney must ensure the defence of legality, with a special attention on Election Day, and can act on its own initiative or at the request of one of the involved parties. Its action must be permanent, and to this end, it has an office at the TSE.

All administrative complaints received by the Electoral Attorney's Office are sent to the TSE, where the highest electoral authority will ensure that they are processed according to the necessary proceedings. If the complaints involve violations to provisions of the Electoral Code, the Electoral Attorney can initiate an investigation and gather evidence that will be sent to the TSE in order to sanction the violation according to the Electoral Code. In case of crimes detailed in the Penal Code as constituting electoral fraud, the Electoral Attorney's Office will investigate the matter and forward the case to the regular courts.

The Electoral Attorney's Office organised a mobile coverage, for these recent elections, including around 500 supervisors ("*fiscales*") for the country's 460 Polling Centres. Notwithstanding, due to transportation problems they were not able to service all Polling Centres in a uniform and permanent manner. The EU EOM observed that the Electoral Attorney's Office was not effectively present in the majority of Polling Centres,<sup>22</sup> giving rise to criticism from political parties and the public, who were expecting a greater and more active presence. However, during the final tabulation carried out by the TSE, these electoral supervisors played an important role, following the entire process for the verification and comparison of Closing and Counting Protocols.

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<sup>22</sup> The Electoral Code does not establish the mandatory presence of these electoral supervisors in Polling Centres.

The competences bestowed upon the Electoral Attorney's Office, especially the possibility of acting on its own initiative against breaches of the law that come to its attention, were hardly ever used during the recent electoral process. Notoriously, when faced with violations against the temporal timeframe of the election campaign, which were not considered or treated adequately by the Electoral Attorney's Office.

### **Decentralised Voting, the “*voto residencial*”**

Until 2006, the organisation of elections in El Salvador continued to reflect the political tensions and climate of mistrust that existed in Salvadoran society after the war. As occurred in other countries in the region,<sup>23</sup> Polling Centres and JRVs were clustered in departmental and municipal capitals, for security reasons as well as to promote the secrecy of the vote. This forced voters to travel, often large distances, to effectively exercise their right to vote.

In 2003, the Legislative Assembly enacted the establishment of decentralised voting, or the residential vote (“*voto residencial*”), which was to come into effect as of 2006 as a pilot project in seven municipalities<sup>24</sup> spread out among various departments. As opposed to centralised voting, the goal of residential voting is to bring the ballot boxes closer to the voters, allowing them to vote as close as possible to their place of residence, thus cutting down on travelling distances and favouring greater participation.

The pilot experience proved successful and therefore the TSE decided to extend residential voting for the 2009 elections to the entire department of Cuscatlán. Overall, 23 municipalities and 196,773 voters (4.65% of registered voters) were entitled to the residential vote for the 2009 elections. The number of Polling Centres in Cuscatlán was increased fourfold, compared to 2006. As was observed, the logistical organisation managed to set-up Polling Centres in remote areas, thus reducing the need for voters to resort to the transportation services offered by political parties. The TSE also managed to select and train the approximately 2,000 Polling Station members that were needed to staff the 373 JRV. The unanimous opinion, among both political interlocutors and civil society representatives, is that the residential voting project should be extended nationwide for the next elections in 2012. In so doing, the exercise of the right of suffrage would be facilitated by reducing travelling distances and by limiting, or eliminating, the need for transportation towards the JRVs, which in many cases is left to the parties.<sup>25</sup>

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<sup>23</sup> Until the Guatemalan Supreme Electoral Court implemented the decentralisation of JRVs in Guatemala in 2007, voting was also carried out exclusively in departmental and municipal capitals.

<sup>24</sup> The municipalities that were included in the pilot project were: Turín (department of Ahuachapán); El Paisnal (San Salvador); Nuevo Cuscatlán (La Libertad); San Juan Nonualco (La Paz); Tecapan (Usulután); Carolina (San Miguel) and Meanguera del Golfo (La Unión). Legislative Decree no. 133 – Special Provisions for residential voting.

<sup>25</sup> It is the TSE's responsibility to transport voters. On Election Days, the TSE hires transport companies in urban areas to provide voters with free transportation towards Polling Centres. For logistical reasons, in rural areas, the TSE prefers to finance political parties who are then responsible for organising these transportation services, without actually verifying the conditions in which these services are provided and without any real accountability.

Regarding the generalisation of residential voting, the EU EOM would recommend greater participation of the JEDs and JEMs together with the Electoral Organisation Directorate, for the identification and selection of the new Polling Centres and JRVs, as well as strengthening the technical capacity of the TSE's cartographic department.

## **VI. VOTER REGISTRATION**

### **The Right to Vote**

The Constitution guarantees the right of suffrage to all Salvadoran citizens over the age of 18 (Articles 72 and 73). The Electoral Code regulates this right in a more detailed manner, focusing on the duty of citizens to register themselves at the National Registry of Natural Persons (*Registro Naional de las Personas Naturales*, RNPN). The RNPN issues the only valid identity document –the national identity card (DUI) - for the effective exercise of political rights.

The registration system in El Salvador is automatic: registration on the Central Electoral Register is done automatically once a Salvadoran citizen obtains a DUI. This procedure has been in force since 2000. The DUI is valid for five years. Nonetheless, in 2006, the Legislative Assembly enacted a decree that extended the validity of all DUI's until the end of 2009, with the aim of not restricting participation in the recent election processes.

The DUI contains the most important elements for the identification of citizens: complete name, a unique permanent identity number, a photograph, signature or fingerprint, date of birth, names of parents, civil/marital status, blood type, home address and profession. Its design includes technologically advanced safeguards and protection devices, which makes it a far safer and more reliable document than the personal identity document (*Cédula de Identidad Personal*) and the voter card (*Carnet Electoral*), which were both used to exercise the right of suffrage in the past. The implementation of this modern and reliable identity document is in line with international good practices in this field. It has even served as a model for other countries in the region.

Despite the explicit recognition of the right of universal suffrage, the exercise of this right is limited, in practice, for several groups of Salvadoran citizens. The largest group is undoubtedly that of Salvadoran citizens living abroad, whose number is estimated at approximately two and a half million. The Legislative Assembly enacted a transitory decree for the presidential elections, which only allowed Salvadoran citizens with DUIs issued in the United States of America (39,463 citizens in total) to cast their vote in one unique Polling Centre located in the capital, San Salvador. The turnout for this group barely reached 0.55%.<sup>26</sup> The EU EOM considers that the implementation of a system

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<sup>26</sup> Other groups who are unable to exercise their right of suffrage, because of the lack of adequate instruments, include hospitalised citizens, citizens on remand awaiting to be sentenced, and especially police and army personnel on duty on Election Day.



allowing for the effective exercise of the right of suffrage by Salvadorans living abroad, without the need for them to travel to El Salvador in person, is very important. Such measures would be in line with the principles of inclusiveness and citizen participation in election processes.

Despite these procedural limitations on the exercise of the right of suffrage, the legal framework does not restrict the international principle of universal suffrage in an arbitrary or unreasonable manner. These restrictions only suspend the exercise of this right to formally sentenced persons, persons officially declared to be mentally disabled, persons judicially proscribed from voting, persons who for no just cause refuse to accept a popularly elected position and persons condemned for committing criminal offences.

### **Procedures for Voter Registration**

The Electoral Register is one of the organs that comprises the TSE and is responsible for the preparation, update, purging and issuing of Voter Lists. The Electoral Register is centralised and is fed with information provided by the RNPN (e.g. first-time registrations, changes in civil/marital status, identities, addresses, etc.) as well as data provided by the Supreme Court of Justice, the Municipal Mayors' Offices and the General Directorate of Migration and Aliens.

The procedure for registering in the Electoral Register is free only when a citizen requests a DUI for the first time. A fee of 10.31 USD is required when a citizen requests a modification or renewal of their DUI. The RNPN has contracted a private company to manage the issuing of DUIs, a measure that has been criticised by various political actors as it introduces commercial interests in the handling of a fundamental and obligatory document, which, as such should, be free of charge. The number of registered citizens for the 2009 elections was of 4,226,479.<sup>27</sup>

The EU EOM observed that the procedures and safeguards for the first issuance of a DUI are verified in a uniform and efficient manner. Notwithstanding, the lack of efficient control mechanisms in the modification of DUI data, especially regarding address changes, is another, and clearly worrying, matter from an electoral perspective. The lack of rigorous controls on effective residency (utility bills, rent leases, children's school enrolment codes, or other similar proof) in the procedures for modifying addresses opens up the possibility for parties to abuse these procedures, by relocating voters along strategic lines, especially for municipal elections. In so doing, parties can transfer voters from a hypothetically safe, or lost, municipality to others, which are expected to be closely fought.

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<sup>27</sup> According to the latest population census in 2007, the number of persons registered in the Electoral Register is greater than the population over the age of 18. The 2007 census identifies a population of 3,422,482 persons. This disparity can be partly explained by the very strong rate of emigration and the significant number of deceased Salvadorans who are believed to remain on the Electoral Register. The Electoral Register should be purged continuously, in order to reduce such disparities with the census.

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On the other hand, the lack of any safeguards or verification by other administrative bodies implies that the municipal authority over the issuance of birth certificates, frequently leads to speculation that certain mayors seeking re-election may abuse the system by issuing false birth certificates. This issue is particularly controversial when it concerns foreigners who live in areas bordering El Salvador, who would subsequently be able to request a DUI and vote in the corresponding municipality.

*Evolution of the Electoral Register from 2000 to 2009*

<b>Year</b>	<b>Registered Voters</b>	<b>Percentage Growth</b>	<b>Number of Voters</b>	<b>Percentage of Absent Voters</b>
2000	3,264,724	-----	1,256,342	62%
2003	3,537,091	7.7%	1,398,726	60%
2004	3,442,330 <sup>28</sup>	-2.67%	2,317,981	33%
2006	3,801,040	10.47%	1,998,014	47%
2009	4,226,279	11.18%	2,268,882	46%

The TSE's Electoral Register is permanently active and depends on the Municipal Family Registers (*Registros de los Estados Familiares*) and other bodies to update its database regarding deaths, the naturalisation of foreigners, changes of residence, formally sentenced persons, etc. The EU EOM observed that updates are not always efficiently processed with the current system, due to delays or even a lack of information provided by the municipalities. Unsurprisingly, political parties and civil society organisations have criticised and complained about the existence of a large contingent of deceased persons in the Electoral Register.

The Electoral Code establishes (Article 30) that the inscription of citizens in the Electoral Register is suspended 180 days before the date set for the elections. The Register must be totally closed 120 days before the elections. All changes of residence which had electoral consequences were suspended a year before the elections. No modifications are authorised, beyond those necessary to correct blatant errors, to cancel the inscription of deceased persons and any fraudulent inscriptions, during the suspension period and after the Register is closed off. The inscription of persons who will turn 18 during the period comprised between the suspension of inscriptions in the Register and one day before Election Day is also permitted. The TSE ensured the compliance with these provisions and legal deadlines, thus consolidating the reliability of the Electoral Register. These provisions are in line with international good practices in this field, which recommend that changes to the Register should be limited near Election Day.

The period for consulting the Electoral Register began 165 days before the elections and ended 15 days before the final closure of the Register. The TSE signed a cooperation agreement with all the Municipal Mayor's Offices in the country allowing it to display the respective Voter Lists in their premises. This measure gave citizens the opportunity

<sup>28</sup> On this year, the voter card (*Carnet Electoral*) database was replaced by the RNPN-managed DUI database. This change permitted the Electoral Register to be purged more efficiently, as a result, the number of registered voters diminished compared to the previous year.

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to verify their data in advance, allowing them to request the correction of any evident errors within the established deadlines. The same Voter Lists were used for the January and March elections.

International good practices on voter registration establish that preliminary Voter Lists should be made accessible to registered voters and political organisations, thereby allowing them to verify the data. The TSE undertook several actions in this sense. Every party contesting the elections received a copy of the Voter Lists and voters were able to verify their data in shopping malls, mobile information units, Municipal Town Halls, and Webpages.

On 2 August 2008, the TSE announced that it would provide political parties with copies of the Voter Lists. However, the copies that were handed out to political parties excluded details on citizens' addresses. All the political parties, except for the incumbent party, demanded a greater access to the Electoral Register, which does include this information, in order to verify the voters' exact addresses. The TSE President, with the support of the majority bloc of magistrates, considered that it would be inappropriate, on the grounds of confidentiality, to provide political parties with such private details.<sup>29</sup> This limited access, decided by the TSE Presidency was also imposed on the TSE magistrates. This initial refusal was gradually relaxed, mainly due to the pressure exerted by some parties. Approximately one month before the presidential elections, the TSE magistrates were able to enjoy full access to the Electoral Register database. Although this measure appeared quite late in the process, it permitted a more detailed supervision of the registers, contributing decisively to heighten the level of transparency and trust in the electoral process.

In 2007, the Organisation of American States (OAS) carried out an audit of the Electoral Register, issuing a series of recommendations that the TSE was unable to implement fully. The general conclusions of the audit indicated that there was a continuing need to invest in the purging of the Register to improve its reliability.

According to the TSE, most of the complaints filed by political organisations regarding the Electoral Register were motivated by a lack trust in the municipalities' management of the Family Register. The most frequent complaints refer to the existence of duplicate DUIs, and even point the finger at several mayors who would have been using the Register inappropriately to further their own interests, issuing birth certificates to foreigners who would therefore be entitled to obtain a DUI and thereby vote in the municipality. Nonetheless, the TSE considers that most of these complaints have been addressed and dealt with.

The lack of trust in the Electoral Register, voiced mainly by the FMLN, also stems from the handling of the database by institutions that are closely linked to the incumbent party.<sup>30</sup>

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<sup>29</sup> El Salvador does not have a personal data protection law, although there are constitutional precedents in the matter.

<sup>30</sup> The President of the Republic appoints the RNP President, the Director of the Electoral Register was appointed by ARENA.

Electoral laws and regulations include the necessary provisions for political parties to exercise their right to supervise the Electoral Register in a permanent manner. In practice, this supervision can be articulated through the Electoral Review Board<sup>31</sup> or through the TSE magistrates, who are entitled to supervise and follow the purging of the Electoral Register (directly as well as through the RNPN.)<sup>32</sup> Nevertheless, these instruments have not been as effective as had been hoped and the management of both databases continues to be a source of mistrust.

## **VII. CANDIDATE REGISTRATION**

Candidate registration for the legislative and municipal elections concluded on 28 November 2008, and on 15 January for the presidential elections. The Electoral Code does not set out excessive or discriminatory requirements for candidate registration. Only in five municipalities were problems reported to the EU EOM regarding this stage of the process. In these cases, the majority were due to candidates being refused for not presenting all of the required documents, or because of minor inconsistencies in the registration forms which were resolved by the Departmental Electoral Boards.

The withdrawal of two out of four presidential candidates highlighted further shortcomings in the electoral legislation. The Electoral Code does not stipulate any specific procedures for the withdrawal of candidates once the inscription period has finalised.

## **VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT**

### **Background to the Election Campaign**

As mentioned previously, on 1 September 2008 the Supreme Electoral Court (*Tribunal Supremo Electoral*, TSE) decided to hold the general elections on two separate dates, 18 January for the municipal, legislative and PARLACEN elections, and 15 March for the presidential elections. This decision was taken with the favourable votes of only three of the TSE's five magistrates and was considered by the opposition to be politically motivated. According to the Electoral Code, any decision that is not of a purely administrative nature requires a majority of four favourable votes, which was not the case. Furthermore, in 1994, the only year since the Civil War in which all three elections coincided in one same year, all of them were held on the same day.

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<sup>31</sup> The Electoral Review Board is a permanent body that includes representatives of every registered political party.

<sup>32</sup> Article 5 of the Organic Law of the RNPN, establishes that its Board of Directors will be composed of six members, and their respective substitutes, both the TSE and the Electoral Review Board can appoint one member each.

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All the political parties that competed in the municipal, legislative and PARLACEN elections were able to perform their campaign activities without any major obstacles, albeit some minor incidents were reported to have taken place. At the municipal level, ARENA and the PCN presented independent lists in every case, while the FMLN ran in coalition together with CD or the PDC in some cases.

Initially, all of the political parties registered candidates for the presidential elections, with the exception of CD and FDR. However, soon after President Sacca called for the creation of a united front against the FMLN, only six weeks before Election Day, both the PCN and the PDC withdrew their candidates claiming that they had insufficient funds to finance their campaigns. Subsequently, both parties announced their support for the ARENA candidate. In the PCN's case, both the candidate for the presidency and the candidate for the vice-presidency expressed their disagreement with this decision, forcing the party leadership to expel them from the party in order to be able to deregister them at the TSE. With only two candidates remaining, the political polarisation increased, as did the negative tone of the campaign.

Various factors contributed to the clear imbalance between the parties competing in these elections, both for the legislative as well as for the presidential elections. Beside the fact that most of the country's main media outlets maintained positions favouring the incumbent party, the parties had unequal access to campaign resources. Because of the lack of norms that regulate donations and campaign spending, ARENA was able to invest much larger amounts than the FMLN and the other parties as a whole.<sup>33</sup> Furthermore, various associations that were not legally registered as political organisations participated in the election campaign, in clear breach of Article 284 of the Electoral Code. Two of these associations, linked to ARENA, "Acción Solidaria" and the "Cruzada pro Paz y Trabajo" were responsible for most of the negative campaigning, while both, together with the "Amigos de Mauricio" -an association linked to the FMLN- were among the six organisations that spent the most on campaign activities; even more than was spent by the remaining political parties.

Another factor that exacerbated the imbalance between parties with different financial capacities was the lengthy campaign, which was further extended by the TSE decision to hold two separate Election Days. Although the Constitution (Article 81) and the Electoral Code (Articles 230 and 290) establish that the campaign cannot begin before the legally established official date, campaign activities began a year before this date. Not only did this put the parties with fewer resources at a clear disadvantage, but it also generated a significant feeling of exhaustion among the voters. The TSE did not take any measures against any of the aforementioned violations of the Electoral Code provisions on campaigning.

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<sup>33</sup> According to Transparency International's monitoring of the campaign, ARENA spent nearly seven times more than the FMLN in the first monitored period (up to November 2008). In the second monitored period (until the first half of January 2009), ARENA still spent 375% more than the FMLN.

## Overview of the Election Campaign

The 120-day campaign period for the presidential elections officially began on 15 November 2008, while the 60-day campaign period for the legislative and PARLACEN elections officially began on 18 November. The campaign for the municipal elections began one month before Election Day (Article 81 of the Constitution). Nevertheless, all of the parties, but especially ARENA and the FMLN started their campaign activities much earlier, broadcasting daily messages, mainly on television. Political party representatives could be observed, prematurely displaying party symbols, as well as posting party symbols and flags in public spaces, practically throughout the country.

Despite the heightened level of political polarisation, the campaign progressed in a relatively calm atmosphere as a whole, regardless of the aggressive subjacent rhetoric.<sup>34</sup> The limited effects of negative campaign tactics would seem to denote a considerable degree of maturity and political awareness among the Salvadoran population.

The campaign unfolded without any significant obstacles throughout the country. In addition to political rallies with the main candidates, campaign activities included door-to-door canvassing, painting walls with party colours and logos as well as sticking posters of the main candidates (practices known as “*pinta y pega*”) and small motorcades. Most of the relatively few incidents that occurred were considered to be minor (insults, scuffles, injuries or slight blows) and took place mainly while carrying out “*pinta y pega*” activities, in an attempt to demonstrate “territorial control”.

The destruction of propaganda material was reported in various parts of the country, affecting different parties, although it did not seem to follow a specific trend. On the other hand, “gentlemen’s agreements” (civic understandings) were subscribed between contenders in many municipalities, where the campaign took place peacefully and in a cooperative manner.

The FMLN’s most repeated slogan was “Vote for Change” (“*Vota por el cambio*”). On the other hand ARENA employed positive slogans such as “Vote Wisely” (“*Vota con sabiduría*”) or “Vote for Freedom” (“*Vota por la libertad*”), whilst simultaneously reiterating messages on the dangers of communism and the imminent risk that El Salvador could fall into the hands of Venezuelan President, Hugo Chávez, if the FMLN won.

Despite being expressly prohibited by the Constitution and the Electoral Code<sup>35</sup>, high-ranking civil servants campaigned in favour of the incumbent party. The President of the Republic and the Minister of Security were among those involved. Possibly the most

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<sup>34</sup> ARENA’s presidential candidate, Rodrigo Ávila, called FMLN militants terrorists, atheists and armed revolutionaries, who would only bring war, violence and communism. The FMLN presidential candidate used a fake interview to link Ávila with a controversy surrounding the well-known murder of three Salvadoran Members of PARLACEN in Guatemala.

<sup>35</sup> Article 218 of the Constitution and Article 237 of the Electoral Code prohibits civil servants from taking advantage of their positions to carry out partisan activities in favour of any party.

significant case, given the relevance of the institutional role, was the General Attorney (*Fiscal General*), who linked the FMLN to organised criminal gangs (“*maras*”) and illegally leaked banking details of the opposition presidential candidate to the press.<sup>36</sup>

The FMLN resorted to negative campaigning less consistently, but the party leadership and the presidential candidate, Mauricio Funes, repeatedly maintained that ARENA could defraud the elections, without substantiating these accusations.

The EU EOM observed the use of state resources in the campaign, such as the use, by some mayors, of publicly owned vehicles for campaign activities. One of the more frequent practices consisted in painting Town Hall buildings in the colours of the party that governed that municipality as well as using the premises to store campaign material.

The excessive distribution of material goods in the poorer neighbourhoods around the country (especially basic foodstuffs, and primarily in the capital) occupied an important part of parties’ campaign activities, in clear opposition to international good practices. The day before the presidential election, EU EOM observers in five of the country’s departments<sup>37</sup> reported the distribution of roofing materials to the people, by individuals clearly identified with ARENA’s party colours, within the framework of government sponsored programmes.

The most blatant violations of the prohibition to carry out campaign activities in the period prior to the presidential election came from the broadcasting of campaign messages on television as well as releasing tens of thousands of leaflets from airplanes in various departments, favourable to the incumbent party in both cases.

The TSE took no action against any of the infractions committed by the parties, nor did the Electoral Attorney’s Office whose mandate is even clearer in terms such violations, even without the need for a formal complaint.

### **Financing of the Election Campaign**

The Electoral Code establishes that all parties competing in an election have the right to receive public financing, the so-called “political debt” (“*deuda política*”) to carry out campaign activities during the election period (Article 190). The exact amount depends on the number of votes obtained in the previous elections, adjusted to inflation. Political parties that compete for the first time will receive a basic sum. Parties are not required to account for how they spend these state funds. According to the TSE, 17 million USD were assigned to the political parties for the 2009 elections.

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<sup>36</sup> President Sacca attended the ARENA campaign-closing event a little after having coined the FMLN as “enemies of democracy and freedom”, and the opposition candidate and his party a “perverse association which pretends to fool the entire country.” The Minister of Security accused the FMLN of being involved with the “*maras*” or in the prison mutinies of imprisoned gang members, without presenting any evidence.

<sup>37</sup> Santa Ana, Chalatenango, San Vicente, La Paz and Cuscatlán.

There is no legal framework to regulate party financing in El Salvador. The Electoral Code does not consider any restriction to private financing. Political parties can accept donations and raise funds without any limit. Neither the parties nor the donors are required to reveal the source or amount of this financing. There are no provisions for the public disclosure of how these resources are spent. Moreover, there are no prohibitions regarding the sources of financing, parties can receive funds from foreign donors, from government contract holders, etc.

The legal vacuum regarding campaign financing is a serious flaw in the transparency of the electoral process, which is contrary to international commitments and facilitates the appearance of important competitive imbalances among the parties. Therefore, the EU EOM recommends that regulations be drafted regarding the sources of these funds and that ceilings be set for campaign financing. Legal requirements should also be implemented requiring the public disclosure of private donations received by all political parties and candidates with the aim of guaranteeing the transparency of the process and to contribute to greater equity between all parties and candidates, in accordance with international good practices for elections.

### **Complaints and Appeals during the Campaign**

Relatively few complaints were lodged before the Office of the Human Rights Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*, PDDH), the TSE or the PNC during the election campaign. Of these complaints, most of them pertained to violent clashes between followers of different political parties, generally while carrying out “*pinta y pega*” activities or due to the destruction of campaign material. Other frequent complaints focused on breaches of the temporal limits of the campaign by political parties, the use of offensive or denigrating rhetoric in the context of smear campaigns, alleged vote buying and the participation of civil servants in campaign activities. Finally, the TSE’s passivity in permitting that several associations not legally constituted as political parties could promote election campaign activities was also a source of complaints.

The TSE’s decisions in response to these complaints were not made public; hence, it is impossible to assess their legal grounds.<sup>38</sup> Furthermore, there is a limited tradition of formalising complaints and protests within the context of Salvadoran electoral processes, due, to a certain extent, to the lack of confidence in the TSE’s neutrality as a judicial organ for electoral matters. All of these elements compounded with the relative lack of technical qualifications at the lower levels of political organisations, frequently

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<sup>38</sup> The TSE received eight official complaints regarding the pre-electoral period for the legislative, municipal and PARLACEN elections. Those that were filed by the FMLN pertained to violations of the regulations on the beginning of the campaign period, the use of inflammatory language during the campaign and the incorporation of the FDR in three districts’ ballot papers. On the other hand, ARENA’s sole complaint demanded that the coalitions be authorised to have one single party agent in each JRV. CD requested the introduction of three ballot papers for these elections to allow for the direct suffrage of PARLACEN candidates, as well as changes in the composition of the JRVs. Finally, the FDR denounced the destruction of campaign materials, and the violation of provisions regarding the official opening of the electoral campaign, as did the FMLN. The Court dismissed all of these accusations.

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led to the dismissal of complaints for procedural flaws, either irremediable or unsolved by the plaintiffs in the established deadlines.

Notwithstanding, the TSE contributed, although in a slightly subdued manner, to safeguard the principle of equality between political contenders by denouncing, on its own initiative, two violations of the campaign rules for the presidential elections, both of which related to the media.<sup>39</sup>

The introduction of specific procedural norms for the processing of complaints, accusations and appeals during the campaign, which clearly define the electoral body responsible for the implementation of the appropriate corrective measures, the deadlines for their adoption and any eventual appeals against them, would benefit the exercise of the right to effective judicial protection during the election campaign period.

### **Voter Education**

Before closing off the Electoral Register, the TSE designed an ambitious system of citizen consultations, directed at the verification of the presence and correctness of the data contained within it. A similar system was employed at the final stages of the election process, to help voters locate the Polling Centres where they were registered to vote.<sup>40</sup> To this end, the TSE reached an agreement with all the Town Halls around the country, allowing it to exhibit the informative Voter Lists as well as the definitive Voter Lists in all of the country's 262 municipalities.<sup>41</sup>

The TSE focused on informing registered voters of the exact location where they would be entitled to cast their votes: Polling Centre, JRV number, number on the JRV Voter List as well as any eventual free transportation routes available for voters. The TSE also decided to inform those voters who would turn 18 between 18 January and 14 March and who had initiated the correct procedures to obtain a DUI in a timely manner, on the location of their respective Polling Centres and JRV numbers.

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<sup>39</sup> The TSE unanimously agreed to take action against the publication of the statistical report in the *Diario de Hoy* on 12/3/2009 (for violating Article 230 of the Electoral Code). By a qualified majority vote, it decided take action against the broadcasting by *Canal 21* of the “*Ciudadano por la Defensa del Voto*” publicity spots (for violating Article 227 of the Electoral Code).

<sup>40</sup> The General Election Plan (*Plan General de Elecciones*, PLAGEL) that the TSE drew-up established the public information activities:

Citizen Information and Consultation on	Beginning	End
Verification of data on Voter Lists, between the suspension of inscriptions to the Electoral Register and the Register's final closure	4/8/2008	3/9/2008
Where to vote for the 18/1/2009 municipal and legislative elections	18/12/2008	18/12/2009
Where to vote for the 15/3/2009 presidential elections	12/2/2009	15/3/2009

<sup>41</sup> The TSE provided all of the legally registered political parties and the Electoral Review Board with a printed copy of the Displayable Electoral Register (*Registro Electoral de Consulta*) together with a digital copy on CD, as well as another CD containing the final Voter List.

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The TSE equipped 115 information points throughout the country, where citizens could obtain information on their respective Polling Centres and JRVs. Of these 100 were fixed and/or semi-permanent whereas 15 were mobile and were deployed to the 23 municipalities where residential voting was in effect. Furthermore, the TSE distributed 300 interactive informative CDs to civic-electoral non-governmental organisations, the media, political parties and Town Halls as well as setting-up an on-line information centre to respond to citizen queries and to provide information. On each of the Election Days, the TSE set-up 75 information points in the largest Polling Centres throughout the country's 14 departments.

The various information points, as well as the Town Halls, were prepared to receive complaints regarding blatant errors on the Electoral Register that citizens could file through *ad hoc* forms.

Through its Webpage, the TSE also offered citizens the possibility to check their details on the Voter List by simply entering their registration number. Several adverts containing electoral information were also published in newspapers with a nation-wide coverage.

## **IX. MEDIA AND THE ELECTIONS**

### **Media Environment**

Salvadoran media underwent a profound transformation, after the signing of the Peace Agreements in 1992, with significant developments both in their degree of openness and in their freedom of expression. Currently, freedom of expression is consolidated throughout the entire spectrum of Salvadoran media, without any censorship or restrictions to the free exercise of the journalistic profession or on the broadcasting of information. Nonetheless, journalists themselves admit to the existence of certain levels of self-censorship in the country, resulting from the particular interests and clear editorial lines of some media outlets.

As in other Central American countries, the concentration of ownership by very influential business corporations or family-based business corporations is one of the main characteristics of Salvadoran media. This fact limits the degree of pluralism in the news coverage and editorial lines of Salvadoran media. The majority of Salvadoran press and electronic media are aligned with the party that has been in power for the last 20 years.

With the exception of the State-owned television channels 8<sup>42</sup> and 10, and the State-owned radio stations *Radio El Salvador* and *Radio Cadena Cuscatlán*, the remainder of Salvadoran media is privately owned. Television and the written press are the most influential and accepted media formats among the population.

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The most powerful group in the media sector is *Tele-Corporación Salvadoreña (TCS)*, which controls four television channels with nation-wide coverage (Channels 2, 4, 6 and VTV) as well as two radio stations (*Vox FM* and *Qué Buena*). Together with TCS, *Canal 12* (whose majority shareholder is *TV Azteca*), *Canal 21* (of the Megavisión group) and *Canal 33* (of the Tecnovisión group, owned by the Technological University of El Salvador) complete the national television spectrum.

As for the written press, there are five main newspapers in the country: *La Prensa Gráfica* (Dutriz group), *El Diario de Hoy*, and *Mas!* (Altamirano group), *El Mundo* (Borja group) and *Diario Co Latino* (a cooperative of the newspaper's workers).

Nearly 200 radios stations are authorised to broadcast on Salvador airwaves. These stations can be broadly divided into two main groups: the *Asociación Salvadoreña de Radiodifusores (ASDER)*, which controls 125 radio stations of all kinds, and the *Asociación de Radios y Programas Participativos de El Salvador (ARPAS)*, which brings together around twenty radio stations, including community radios that normalised their status after the signing of the Peace Agreements in 1992. The Salvadoran radio spectrum is completed with various religious stations as well as those managed by universities (such as *Radio YSUCA*).

### **Legal Framework for the Media during the Election Period**

Article 6 of the Constitution of the Republic of El Salvador guarantees the freedom of expression and the freedom to manifest freedom of thought. Furthermore, it proscribes censorship and the seizure of media outlets.

The only law in force regarding the media in El Salvador is the Telecommunications Law (*Ley de Telecomunicaciones*), enacted on 6 November 1997, and amended on 12 February 2007. The purpose of this law is to regulate the activities of the telecommunications sector as well as to control the exploitation of the radio frequency electromagnetic spectrum. There is no legal framework in El Salvador that regulates the role of the media, or which guarantees its independence or impartiality, beyond the aforementioned law, which is of a purely technical nature.

As for the Electoral Code, the provisions that it contemplates regarding the media are very limited. Furthermore, the TSE's limited control and lack of capacity to guarantee compliance with these provisions implies an excessively permissive environment.

Article 229 of the Electoral Code establishes that State-owned media must offer spaces for all political parties and coalitions to broadcast political propaganda programmes, free of charge and in equal conditions. However, this article does not establish specific free airtime schedules, leaving the design and programming of political propaganda free airtime spots up to a TSE decision, in coordination with the National Communications Secretariat (*Secretaría Nacional de Comunicaciones*) and the Electoral Review Board.

Moreover, this provision has not been implemented to date, in any Salvadoran electoral process. The TSE did not implement it during the campaign period for the January 2009 legislative, municipal and PARLACEN elections or for the March 2009 presidential

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elections. Therefore, political parties and coalitions competing for these recent elections were deprived of their right to make use of free airtime on State-owned media. Nonetheless, none of the parties requested that the TSE guarantee the exercise of this right to free airtime, preferring to broadcast their political propaganda through the private media.<sup>43</sup>

This same Article 229 establishes that, in the absence of specific norms regulating the saturation of propaganda in the media, the TSE must develop appropriate provisions to this effect. Having said this, the election administration did not take any actions in this direction and, as a result, the media, especially radio and television, was inundated by political propaganda.

As far as the campaign silence period, Article 230 of the Electoral Code prohibits the broadcasting of political propaganda in the media during the three days prior to the elections, as well as on Election Day. Similarly, this same article prohibits the publication or broadcasting of electoral opinion polls 15 days before Election Day and until the announcement of the final results. Numerous violations of this article were observed during both election periods, eliciting practically no response from the TSE (see, “*Analysis of the Media’s Role.*”)

The TSE’s excessive permissiveness was also noted with respect to certain degrading and slanderous campaigns, in clear violation of Article 228 of the Electoral Code that contemplates sanctioning all electoral propaganda that harms, smears or slanders candidates. The same article also prohibits damaging the morality, honour and private life of candidates or political leaders through electoral propaganda.

One final provision in the Electoral Code regarding the media is included in Article 231, which establishes a prohibition to broadcast any institutional publicity on contracts or inaugurations of public works, already executed, in progress or planned by the Government, Municipal Councils and Autonomous bodies, in the thirty days before Election Day,. The newspaper *El Mundo* breached this prohibition on 23 December 2008, by publishing a special supplement, distributed in the department of La Paz, enumerating various public works carried out during the Mayor of Zacatecoluca’s term of office.

### **Analysis of the Media’s Role**

Salvadoran media carried out their news coverage in an environment characterised by normalcy and the respect for the freedom of expression.<sup>44</sup> By broadcasting interviews and debates with candidates, the Salvadoran television channels, radio stations and

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<sup>43</sup> Private media is more popular and has better viewer ratings than the State-owned media in El Salvador.

<sup>44</sup> This climate was dampened only by the unfortunate incidents that took place on 4 March. On the one hand, ARENA sympathisers assaulted journalists from *Canal 2*, *Canal 33* and *Radio YSKL* during the ceremony, held in San Salvador, for the presentation of credentials for Mayors elected on 18 January. On the other hand, that same day, alleged FMLN sympathisers attacked a team of *Canal 4* reporters, also in San Salvador.

newspapers contributed significantly to keeping the electorate well informed of the different parties' political programmes.

During the campaign for the presidential elections, the media once again demonstrated their availability and interest in hosting a face-to-face debate between the ARENA and FMLN presidential candidates.<sup>45</sup> However, the refusal by ARENA's candidate, Rodrigo Ávila, to accept the previously agreed upon conditions for the debate, put an end to the project. Moreover, the FMLN candidate, Mauricio Funes, refused to participate in studio interviews requested by the television channels 2 and 33, or to give interviews to the newspaper *El Diario de Hoy* throughout the entire campaign period. No matter how legitimate, these attitudes from both candidates deprived the electorate of a debate between candidates, a practice of great informative value, which is a regular exercise in electoral processes throughout the world.

Most of the media demonstrated a clear bias in favour or against the main contenders in their news coverage of the election campaign. A circumstance that generally benefited ARENA (see, "*Media Monitoring Results.*") The media bias was observed at the quantitative level, with disproportionate imbalances in the distribution of airtime and space for each party, but mainly on the qualitative level. The news items presented by the media frequently included opinions and reflected tones whose obvious purpose was to influence voters' opinions, positively or negatively, regarding the two main contesting parties.

At the same time, the media were also a platform for the development of numerous smear campaigns on behalf of political parties and civic institutions aligned with particular political parties, such as "*Fuerza Solidaria*" or "*Cruzada pro paz y trabajo*". The TSE did not respond to the broadcasting of such campaigns, which were contrary to the spirit of the Peace Agreements, and occasionally defamatory.

Furthermore, the EU EOM observed various violations of Article 230 of the Electoral Code, which establishes the prohibition to broadcast electoral propaganda in the three days prior to Election Day and on the day itself. On both Election Days (18 January and 15 March), all nation-wide television channels (*TCS, Canal 12, Canal 21* and *Canal 33*) aired interviews of a clear proselytising tone with candidates or political party representatives. During the period of campaign silence prior to the presidential elections, certain media outlets, such as *TVO* in San Miguel, *Radio Cadena YSU, Radio Cadena El Salvador, Radio Maya Visión* or *Diario Co Latino* broadcast programs, campaign songs or printed propaganda for or against ARENA or the FMLN. Despite the blatant nature of these breaches, the TSE's only reaction was to take measures on two occasions: the airing of a propaganda spot by the "*Movimiento Ciudadano por la Defensa del Voto*" on *Canal 21* and the publication in the *El Diario de Hoy* newspaper, dated 12 March, of an advert which contained statistical data from an opinion poll.

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<sup>45</sup> The international news network, CNN, started negotiations for such a debate, in a cooperation agreement with TCS.

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Finally, during the 15 March Election Day, the TCS, media group, which together with the remaining media outlets had made a public commitment not to announce the results of their own quick counts before the TSE had presented the official data, broke this agreement, in a clear breach of Article 230 of the Electoral Code. The media group reported non-official election results based on their own polls -as of 18:40- while ballots were still being counted. This started a chain-reaction in the other nation-wide television stations, which began reporting on unofficial estimates and results based on their own polls and quick counts, before the electoral authority announced the first official results.

Indeed, television channels and radio stations were broadcasting the tabulation live, announcing the results as they came in from different JRVs around the country. Although the TSE had provided the media with the necessary accreditation to access Polling Centres, under the condition that they would not interfere with the work of JRV members, the presence of the media in tabulation centres is a highly inadvisable and very unusual practice in democratic electoral processes.

### **Monitoring of Media Coverage of the Elections**

The EU EOM monitored 15 national media outlets, between 31 December 2008 and 11 March 2009, with the aim of assessing their degree of impartiality and the extent of their adherence to current legal obligations regarding their news coverage of the election campaign. This monitoring also enabled the EU EOM to verify the level of access of the different parties and candidates to the various media in El Salvador, as well as the pertinence and consistency of any possible complaint or accusation made by political parties regarding the quality of the coverage received in different media.

The sample that the EU EOM selected to carry out its monitoring activities took into account both private and State-owned media in electronic or printed format, with the highest ratings or readerships, and exhibiting different editorial perspectives. The EU EOM monitored the following media:

Television channels: *Canal 2, Canal 4, Canal 6* (all three belonging to the TCS group); *Canal 12, Canal 21 Megavisión* and *Canal 33 Tecnovisión*.

Written press: *La Prensa Gráfica, El Diario de Hoy, Mas!, El Mundo* and *Diario Co Latino*.

Radio stations: *Radio El Salvador, Radio Cadena Cuscatlán* (both State-owned), *Radio Cadena YSU* and *Radio Maya Visión*.

Six media monitors, trained in the European Institute for the Media monitoring methodology, measured and noted the airtimes, space and tone that national media awarded to different political candidates and parties on a daily basis. In this manner, the EU EOM carried out a quantitative and qualitative analysis of the news coverage for both election processes.

## Media Monitoring Results

The results of the EU EOM media monitoring, reveal that during the analysed period, the news coverage by the majority of Salvadoran media was biased and contrary to international standards. This biased coverage, was in most cases favourable to ARENA and unfavourable to the FMLN.

During the campaign period corresponding to the legislative, municipal and PARLACEN elections, the majority of the analysed media gave access to all contenders. However, it was observed that in the radio sector, the news coverage was almost exclusively focused on ARENA and the FMLN, completely ignoring the remaining parties (CD, PCN and FDR) on occasions.

Furthermore, a total of eleven<sup>46</sup> out of the 15 media outlets monitored by the EU EOM, registered disproportionate imbalances in the amount of time/ space allocated to the different parties and/ or biased news coverage of the elections in their contents. In these cases, ARENA was the party that benefited the most from this biased coverage, while the FMLN was the most damaged.<sup>47</sup>

Analysing the monitored media as a whole, the global outcome reveals that ARENA was the party that received the most media coverage on television and in the written press, while the FMLN obtained the most airtime on the radio. (See, Table 1.)

<b>POLITICAL PARTY</b>	<b>TELEVISION</b>	<b>WRITTEN PRESS</b>	<b>RADIO</b>
<b>ARENA</b>	<b>31.8%</b>	<b>34.3%</b>	36.7%
<b>FMLN</b>	26.5%	30.1%	<b>43.9%</b>
<b>PDC</b>	11.5%	10.1%	2.2%
<b>PCN</b>	11.1%	10.8%	1.8%
<b>CD</b>	8.9%	4.4%	8.9%
<b>FDR</b>	10.2%	10.3%	6.5%

Table 1: Total distribution of airtime and space received by political parties.

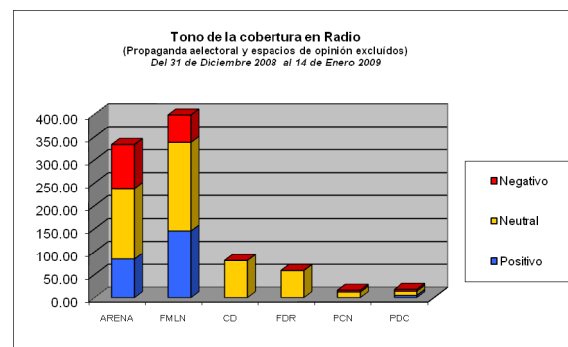
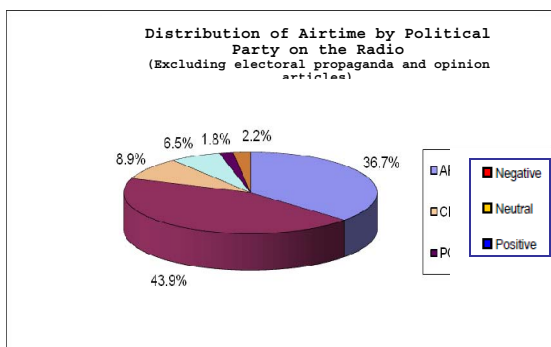
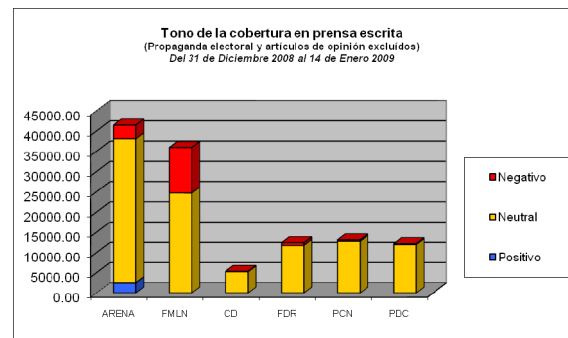
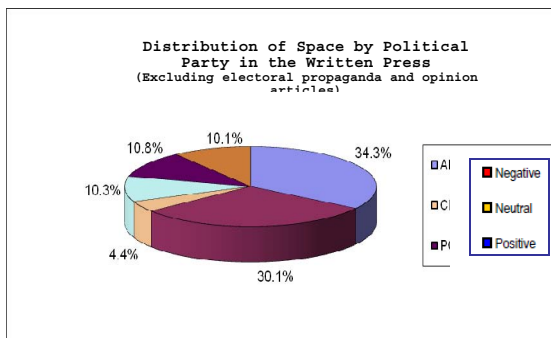
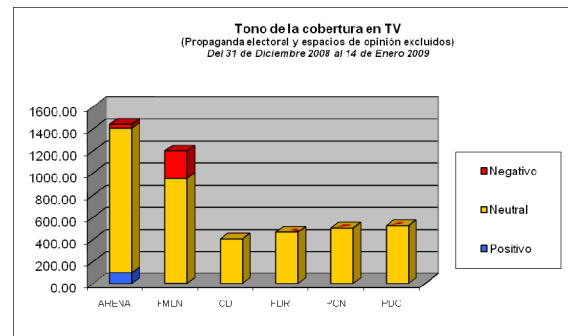
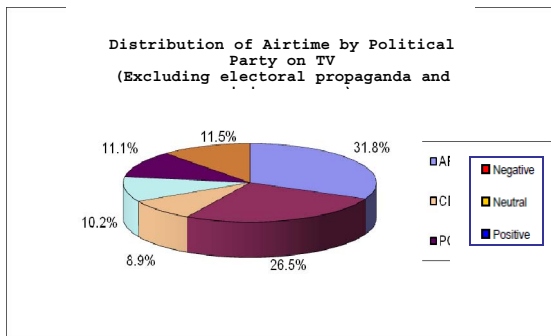
Regarding the tone of information with respect to each of the parties in the first electoral period, the sum of airtimes and tones of the 15 monitored media outlets reveals that the FMLN was the party that received the greatest amount of news in a negative tone on television and the written press (20.7% and 30.9%, respectively). On the radio, ARENA received more news items in a negative tone (28.6%, compared to the FMLN's 15.1%). Regarding positive news items, while ARENA received 6.8% and 6% of such items on television and in the written press, respectively; only 0.2% and 1.2% of the information on the FMLN was considered to be positive on television and the written press,

<sup>46</sup> Television channels: *Canales 2, 4 and 6*; written press: *La Prensa Gráfica, El Diario de Hoy, Mas!, Diario Co Latino*; radio stations: *Radio El Salvador, Radio Cadena Cuscatlán, Radio YSU and Radio Maya Visión*.

<sup>47</sup> Nine media outlets favoured ARENA in their media coverage, while two favoured the FMLN.

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respectively. However, on the radio, the FMLN obtained a greater percentage of positive news items than ARENA (36.4% as compared to 25.1%). (See graphs below.)



As for the election campaign period for the 15 March presidential elections, the fact that there were only two political parties competing in the election (ARENA and the FMLN) accentuated the media trends that were observed for the legislative, municipal and PARLACEN election campaign. In this sense, the number of media outlets that demonstrated a news bias doubled. In this election process, thirteen (out of a total of 15) media outlets were monitored as having imbalances in the amount of time/space allocated to each party and/or revealing partisanship in the tone of their coverage. Once again, a clear predominance was observed in media outlets favouring ARENA (on television: *Canales 2, 4, 6 and 33*; in the written press: *La Prensa Gráfica, El Diario de Hoy, Mas!, El Mundo* and on the radio: *Radio El Salvador, Radio Cadena Cuscatlán and Radio YSU*), compared to those favouring the FMLN (*Diario Co Latino and Radio Maya Visión*).

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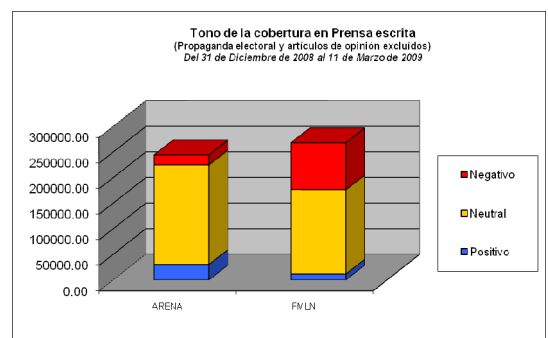
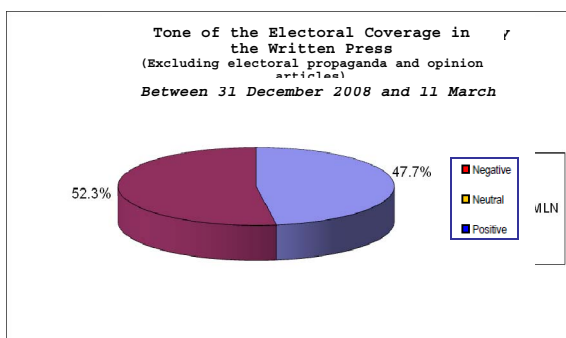
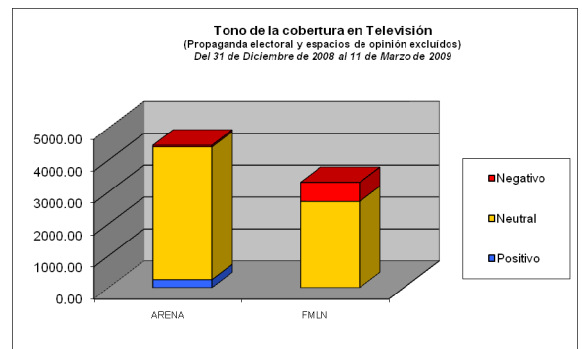
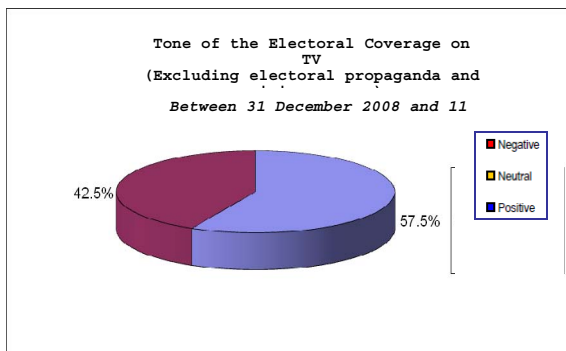
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As in the previous monitoring period, the global result of the analysis of all of the monitored media reveals that ARENA was the party that obtained the largest amount of media coverage on television, whilst on the radio it was the FMLN who obtained more coverage. The total distribution of space in the written media shows a reasonably balanced result. (See, Table 2.)

POLITICAL PARTY	TELEVISION	WRITTEN PRESS	RADIO
ARENA	57.5%	47.7%	60.9%
FMLN	42.5%	52.3%	39.1%

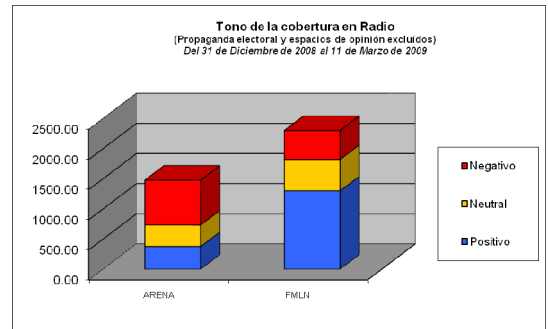
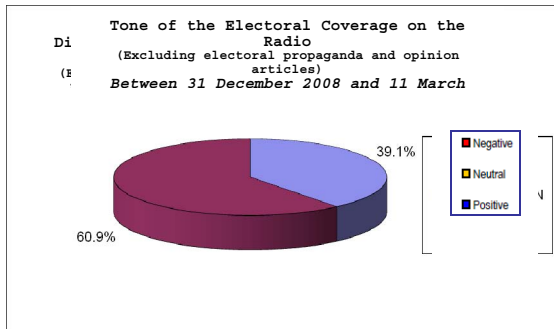
Table 2: Total distribution of airtime and space received by political parties.

In terms of the tone of the coverage, the sum of all the times and tones in the 15 monitored media reflects that the FMLN was, once again, the party that received the largest amount of negative coverage on television and in the written press (18% and 34.2%, respectively). On the other hand, ARENA received more negative coverage on the radio (50.3%, compared to 20.8% for the FMLN). Moreover, on television, ARENA benefited of a positive tone in 5.6% of news items, while the FMLN got 0%. In the written press, ARENA was covered in a positive tone in 12.4% of news items (compared to 4.3% for the FMLN). On the radio, 56.4% of positive news items were favourable to the FMLN, compared to 25.4% for ARENA. (See graphs below.)

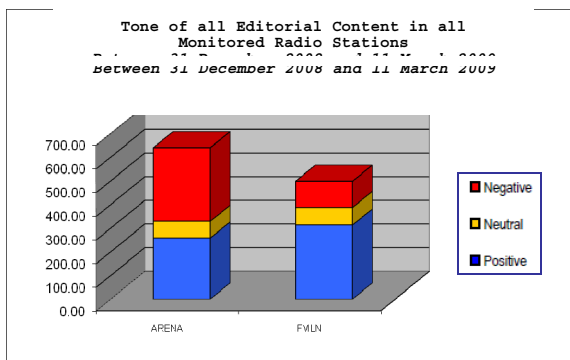
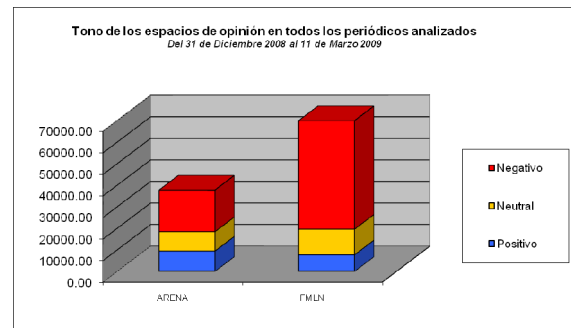
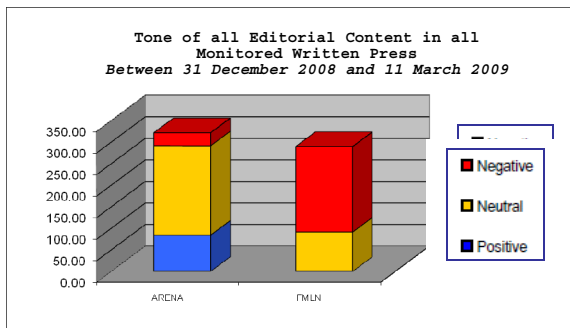


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Beyond the actual news coverage in the various monitored media, the EU EOM also analysed editorial content in the different media. The results indicate that the FMLN was the party that received the greatest amount of negative editorial content on television and in the written press, whilst this was the case for ARENA on the radio. (See graphs below.)



Media	Party	Positive	Neutral	Negative
Television	ARENA	26.1%	64.5%	9.4%
	FMLN	0%	31.6%	68.4%
Written Press	ARENA	25%	23.9%	51.1%
	FMLN	11%	17.1%	71.9%
Radio	ARENA	40.3%	11.2%	48.5%
	FMLN	62.8%	15%	22.2%

Finally, the EU EOM media monitoring also followed the broadcasting of institutional propaganda (a total of 9 hours and 54 minutes on the radio; 2 hours and 54 minutes on television and 142.4 pages in the written press) illustrating the progress achieved by ARENA governments. This bad practice further exacerbated the FMLN's disadvantage compared to ARENA in Salvadoran media.

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The broken-down and detailed results for each of the 15 media outlets that were monitored by the EU EOM can be found on the mission Webpage ([www.eueom-sv.org](http://www.eueom-sv.org)).

## **X. PARTICIPATION OF WOMEN**

Although Salvadoran law does not establish any barriers to the participation of women in electoral processes, their level of representation in political life is still quite limited. This situation is reflected in the fact that among the four originally registered presidential and vice-presidential candidates, there was only one woman, the PDC candidate for vice-president (although, subsequently the party withdrew its candidature).<sup>48</sup>

Among the 178 registered candidates for the legislative elections, only 36 were women, representing 20% of the total. Of these 16 were eventually elected to the Legislative Assembly<sup>49</sup> (19% of the Legislative Assembly). This represents a slight increase, compared to the 16.6% of women parliamentarians in the previous legislature, representing one additional seat in parliament. The FMLN parliamentary group gained two women parliamentarians (its quota rose from 25% to 28.6%), while in ARENA's case its number of women parliamentarians fell from five to four (its quota of women in parliament now represents 12.5% of its total number of seats).

At the municipal level, several women candidates ran for mayor in important municipalities, including the capital, San Salvador among others. In fact, a slight increase in the number of women mayors was registered, from the 22 that were elected in 2006 (8% of the total), to 27 (10.4% of the total) in the 2009 elections, out of 262 municipalities. Although this increase follows the gradually rising trend in women mayors observed since 2003 (in the 2003-2006 period the percentage was of only 6.5%), these figures are still far beneath those obtained in the 1997 elections, when women represented 22% of elected mayors throughout the country.

Within the electoral administration, an even gender balance was only reached at the lower levels. Out of the five TSE magistrates, and their five substitutes, there was only one woman (as a substitute magistrate). Women represented approximately 14% of board members in Departmental Electoral Boards (eight women among 56 members, the majority of which were FMLN appointees) and between 10% and 25% of most

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<sup>48</sup> This situation was even lower than that of the previous presidential elections (in 2004), where among the eight candidates to president and vice-president, there were two women candidates for the vice-presidency, one of which was the incumbent ARENA vice-president.

<sup>49</sup> There are four women among ARENA's 32 parliamentarians, eleven among the FMLN's 35 parliamentarians, one among the PDC's five parliamentarians, and no women among the PCN's eleven parliamentarians.

Municipal Electoral Boards. However, practically half of Polling Station officials were women, and Polling Station presidents were mainly women.

## **XI. PARTICIPATION OF MEMBERS OF INDIGENOUS GROUPS**

Despite the fact that there are indigenous groups in six of the country's 14 departments,<sup>50</sup> ethnicity, has to date, not played a significant role in elections, to the extent that none of the political parties proposed specific strategies to obtain their vote, and that none of the parties presented indigenous candidates as such. Nonetheless, this situation seems to be gradually changing. For the first time in many decades, a politically motivated organisation in El Salvador defined itself as indigenous -the local election observation mission in the area of Nahuizalco, where in 1932 thousands of members of indigenous groups were executed. After this episode, known as the "matanza" ("massacre"), the indigenous peoples of El Salvador renounced their languages and customs, to avoid persecution, although they continue to suffer economic, social and cultural discrimination.

## **XII. PARTICIPATION OF CIVIL SOCIETY**

Salvadoran civil society has demonstrated its commitment to the electoral process, through, among other initiatives, the organisation of several election observation groups. These groups have at the same time, collaborated significantly to raise electoral awareness and improve voter education around the country. Indeed, the 2009 elections became the most observed election process in the country's history, with over 4,000 accredited observers for the legislative elections and 5,500 for the presidential elections. All of which contributed, not only to improve the transparency of both Election Days, but also to a significant degree of constructive and citizen-minded participation of the youth in the electoral process.

Two-thousand students organised and trained by the Central American University's Public Opinion Institute (*Instituto Universitario de Opinión Pública de la Universidad Centroamericana*, IUDOP) covered over 20% of country's 9,534 Polling Stations for the legislative elections. For the presidential elections, 2,500 students were mobilised to observe over 25% of the country's Polling Stations.

Over 1,000 observers from the Office of the Human Rights Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) covered 151 of the country's 400 Polling

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<sup>50</sup> Theoretically, there are Nahuatl-speaking Pipil communities in the departments of Ahuachapán, Sonsonate, La Libertad, San Salvador, La Paz and Morazán, as well as a few Cacaopera communities in Morazán.

Centres for the legislative elections. For the presidential elections, the number of observers rose to 1,300.

### **XIII. ELECTION DAYS**

#### **Overview**

The EU EOM highlighted the lack of violence in visited Polling Centres for the opening, polling and closing operations, as a very positive aspect of the two Election Days held in January and March 2009. Both Election Days were peaceful and orderly, especially taking into account the closely fought presidential election and the intensity of the campaign. The EU EOM further noted the commitment of all actors with the democratic process. For the legislative, municipal and PARLACEN elections, the EU EOM observed in 118 Polling Centres, whilst this number rose to 242 Polling Centres (out of a total of 407 for the entire country) for the presidential elections. The number of Salvadoran voters who exercised their right to vote for the legislative, municipal and PARLACEN elections rose to 2,264,567, while the number increased to 2,659,138 for the presidential elections.<sup>51</sup>

In the January elections, 73% of observed Polling Stations (*Juntas Receptoras de Voto, JRV*) opened at least half an hour late, often one to two hours after the prescribed time. In several municipalities, polling was interrupted temporarily as a response to allegations regarding the presence of foreigners who were allegedly attempting to vote. Nonetheless, the definitive adjournment of polling was only called for in the municipality of San Isidro, in the department of Cabañas, where 15 JRVs reopened on 25 January. In the municipality of San Agustín, department of Usulután, elections were repeated on 1 February, due to a tied vote from the first Election Day. Both of these repeated elections took place without any incidents.

In the two-month period between the legislative and the presidential elections, the TSE implemented various initiatives with the aim of improving electoral operations. Among others, these included better training for JRV members and political party agents, ensuring that JRV staff arrived at their stations earlier to avoid delayed openings, measures to guarantee the secrecy of the vote as well as the restructuring of some Polling Centre to ensure a more fluid process. Improvements were also made in the system for the transmission of results and in the processing of protocols for the announcement of preliminary results by the TSE.

The improvements that the TSE introduced were reflected in the reduced number of JRV late openings for the presidential elections –in 97% of observed JRVs polling

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<sup>51</sup> The number of valid ballots for the January elections was of 2,215,589 ballots, and of 2,638,588 ballots for the March elections (TSE data).

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started on time- and in the very scarce number challenges and complaints filed for the presidential elections. Similarly, a more agile handling of the various electoral procedures by the Polling Station staff was observed, and the TSE announced preliminary results for the presidential elections in a timely manner. In fact, the TSE announced the preliminary results only a few hours after JRVs had closed, while it had taken several days to announce the preliminary results to announce for the January elections. These improvements had a positive impact on the process and were indicative both of the TSE's openness to accept the recommendations made by different observation missions, but also of its desire to increase the transparency and improve the organization of the election process.

An abundant presence of political party agents was noted in all observed Polling Stations, whereas election observers were only present in little more than a third of observed Polling Stations. The fact that over half of JRV officials, including its presidents, were women was considered very positive.

On the other hand, cases of intimidation were reported within the vicinity, or inside, 25% of the observed Polling Centres for the January elections, a percentage that was reduced to 10% for the March elections. This confirms the persistence of a pattern of excessively zealous party activism on Election Day in Salvadoran electoral culture, especially near Polling Centres.

Despite the fears that existed regarding the possibility that some JRV officers might refuse to sign the Closing and Counting Protocols in the presidential elections, in all observed centres polling officers followed the established procedures, thus demonstrating a significant degree of mutual respect.

The implementation of residential voting in 23 municipalities across the country was logistically well organised, allowing for those Salvadorans who could benefit from these measures to cast their votes closer to their homes, thus contributing to an increased turnout in these areas. Thus, in the department of Cuscatlán, the only department in the country where residential voting was applied in all its municipalities, the turnout for the presidential elections was 9% higher.

EU EOM observers assessed the development of the Election Day as generally positive, rating the process as "good" or "acceptable" in 99% of observed JRVs.

## **Polling**

As a whole, the TSE established relatively reliable and clear procedures for the 2009 election events, guaranteeing the secrecy and freedom of the vote. In order to be entitled to vote, Salvadoran citizens aged 18 or above are required to obtain their national identity card (*Documento Único de Identidad*, DUI), issued by the RNPN. This is the only document that can be accepted as proof of identity for electoral matters. The vote is not compulsory, and there is no sanction for not voting. Polling procedures were comprehensible and the majority of Salvadoran citizens did not encounter major difficulties in casting their ballot. The three different ballot papers that the TSE designed and produced proved to be easy to use. Unfortunately, as previously

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mentioned, PARLACEN members were not elected through a specific and separate ballot paper.

According to the provisions of the Electoral Code,<sup>52</sup> the number of printed ballot papers corresponded to the number of citizens registered in the Electoral Register. This includes, an additional 1%, for the replacement of damaged or defective ballot papers, or in case ballot papers are torn when detaching them from the booklets containing 450 ballot papers that were distributed to each JRV. However, the law does not consider the replacement of ballot papers in the event of mistakes by voters when marking their ballots, and their subsequent request for a new ballot paper. Ballot papers were stored by the PNC, under the supervision of the political parties, before, during and after both Election Days.

In terms of safeguards, the reliability of the DUI must be stressed, as well as the possibility for JRV officers to compare the photograph on the DUI with the one included in the JRV Voter List in order to confirm the identity of the potential voter. Once the authenticity of the document and the voter's identity was verified, the voter received a signed and stamped ballot paper from the JRV Secretary. This procedure added an additional safeguard to the ballot paper, which included several safety features.<sup>53</sup> As a precautionary measure against the possibility of multiple voting, JRV officers applied indelible ink on the voter's thumb and required the voter to sign or mark their fingerprint on a second Voter List ("*Padrón de Firma*"). The stamping and signing of ballot papers by JRV Secretaries together with the signing of the second Voter List by the voter are compulsory and the Electoral Code establishes penalties for any non-compliance.<sup>54</sup> Furthermore, the addition of curtains to polling booths in the presidential elections contributed to guarantee the secrecy of the vote.

In terms of recommendations to improve the procedures for future elections, the Electoral Code could consider the replacement of ballot papers also for cases where the voter requests a second ballot paper, having mistakenly marked the first one. Similarly, the Code could expressly prohibit the presence of non-authorized persons in Polling Centres, and include special provisions to facilitate the vote for physically disabled

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<sup>52</sup> Article 240, Electoral Code.

<sup>53</sup> The Electoral Code, Article 238, establishes that ballot papers; "must have the TSE stamp, the Republic's coat of arms, a correlative numerical code corresponding to the order of the ballot paper and a number corresponding to the respective JRV printed on the ballot paper, with a space for the JRV Secretary's signature and for the official JRV stamp. The last three digits of the correlative numerical code which corresponds to the order of the ballot papers, which is printed on the back of the ballot papers, must be removed before handing the ballot paper to the voter." Despite the fact that ballot papers included serial numbers, by removing the last three digits, and depositing them in a specifically designed bag, the JRVs ensured that the secrecy of the vote was guaranteed.

<sup>54</sup> Article 250 punishes the refusal to sign the second Voter List. Article 277-A of Decree No.749, establishes a fine for not signing and stamping the ballot papers.

persons,<sup>55</sup> the elderly or illiterate persons who have difficulties in casting their ballot unassisted.

### **Participation of Political Party Agents**

The Electoral Code allows political parties to supervise the entire electoral process, in accordance with the highest international standards for transparency in elections. The right of political parties to supervise the process begins with the appointment of political party nominees at the JEDs and JEMs, and includes the presence of political party agents (“*vigilantes*”) in JRVs. The latter are responsible for attentively following the process to ensure that it complies with the law and to raise any irregularity they may observe before the TSE.<sup>56</sup>

Each of the political parties contesting the elections could appoint one party agent per JRV. These agents, duly accredited by the TSE, were able to follow the setting up of the JRVs, the drafting of the Opening Protocol (“*Acta de Apertura*”), the polling and counting procedures, as well as the drafting of the Closing and Counting Protocols (“*Actas de Cierre y Escrutinio*”). Although the Electoral Code does not require that Closing and Counting Protocols be posted outside each JRV, for the public announcement of the results, each party agent received a copy of the Protocol. The Electoral Code enables party agents to challenge ballots during the counting procedures in the JRVs. The EU EOM observed a significant presence of party agents, practically one per party per JRV, and noted a very low percentage of challenged ballots.<sup>57</sup>

The Electoral Code allows party agents to exhibit the colours of their respective political parties while they carry out their functions in the JRVs, as a form of identification. In order to increase the neutrality of the environment in Polling Centres and JRVs, it would be advisable for party agents to be identifiable exclusively with their TSE accreditation.

### **Closing, Counting and the Transmission of Results**

The closing and counting procedures were relatively straightforward. Furthermore, the training provided by the TSE and the political parties were considered to be appropriate. The TSE distributed manuals detailing the closing and counting procedures to each of the 9,533 JRVs (9,543 JRVs for the presidential elections). The closing and counting procedures were carried out in the presence of political party agents as well as accredited national and international observers in a transparent and orderly manner. The formula by which ballots are converted into seats for the different elections is clearly

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<sup>55</sup> Having said this, there are several positive aspects, such as the introduction of ballot papers in Braille, to facilitate the vote of visually challenged persons, or the construction of ramps, in some Polling Centres, for voters in wheelchairs.

<sup>56</sup> Articles 130 to 137, regarding the right of temporary supervision. Articles 139 to 149, regarding the right of permanent supervision. Electoral Code.

<sup>57</sup> Political party agents challenged 0.14% of ballots in the municipal elections. For the presidential elections, the percentage was even lower -only 0.9% of ballots were challenged (TSE data).



stipulated in the Electoral Code, allowing for a transparent allocation of seats. However, the Electoral Code contains certain regulatory gaps in the eventuality of tied votes.

The validity or annulment of ballots was based on the classic criteria that “the will of the voter be clearly identifiable by any mark on the flag of each political party or coalition.”<sup>58</sup>

JRV members duly filled in the Closing and Counting Protocols, at the end of the count and in the presence of political party agents and observers. These Protocols are the basis for the TSE’s announcement of preliminary and final results. Copies of the Protocols were handed over to the TSE, JED, JEMs, political parties, the Electoral Attorney’s Office and the Electoral Review Board. The Closing and Counting Protocols destined to the TSE were sent by fax, or scanned directly at the Electoral Result Processing Centre (*Centro de Procesamiento de Resultados Electorales*, CNPRE) in the capital, and used for the preliminary tabulation of results.

The preliminary results for the January elections were not divulged in a timely manner. Furthermore, the TSE decided not to make any comment on the partial results that it published gradually at its News Centre (*Centro de Divulgación*), which were based on the Protocols that it was receiving. These delays, together with the lack of an effective communication strategy pushed political parties and the media to take the initiative and announce preliminary results before the TSE. For the presidential elections in March, the TSE took measures to improve the preliminary tabulation and communicated available partial results in a clear and timely manner. Five hours after JRVs closed, the TSE was able to announce, based on reliable and conclusive data, the winner of the elections, having processed 90% of the protocols. Representatives of political parties, observers and journalists were able to follow the preliminary tabulation and consult the Closing and Counting Protocols on the computer terminals that the TSE made available to them.

The final tabulation, which was organised in the capital, was broadly transparent and allowed all of those present; JED members, delegates of the Electoral Attorney’s Office, TSE staff, political party representatives and international observers, to verify the Closing and Counting Protocols. The final and definitive results were announced within a reasonable timeframe.<sup>59</sup>

## **Challenges**

The Electoral Code allows accredited political party representatives to challenge the validity or invalidity of ballots when the intention of the voter is unclear.<sup>60</sup> Ballots

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<sup>58</sup> Article.253-C, Electoral Code.

<sup>59</sup> In the January elections, the final tabulation began three days after Election Day and lasted for four days. In the March elections, with only one ballot paper, the final tabulation began two days after Election Day, and lasted for three days. The Electoral Code does not establish a timeframe for the announcement of final results.

<sup>60</sup> Article 253-C, Electoral Code.

challenged at the JRV can only be re-examined during the final tabulation process. The TSE will request the revision of the votes of one or more JRV only when the sum of challenged ballots could alter the final result for the municipality or department.

The number of challenged ballots was quite low in both election events: 3,374 in the legislative elections, 3,352 in the municipal elections and 2,535 in the presidential elections.<sup>61</sup> In the final tabulation for the municipal elections, the TSE requested the reopening of four ballot boxes, in order to verify the challenged ballots. This changed the preliminary result in El Carmen, department of La Unión, where ARENA obtained seven of the twelve challenged ballots, doing away with the PCN's previous lead. In the other three cases, in the municipalities of Concepción Quezaltalpeque, in the department of Chalatenango, Olocuilta, in La Paz and in San Cayetano Istepeque, in the department of San Vicente, the TSE's verification of challenged ballots did not alter the results.<sup>62</sup>

There was no need for the TSE to verify the challenged ballots in the final tabulation process for the presidential elections, given that the difference in votes between both candidates (approximately 70,000), was clearly higher than the number of challenged ballots. Moreover, all political parties unanimously accepted the final results as presented by the TSE.

#### **XIV. ANALYSIS OF RESULTS**

##### **Municipal, Legislative and PARLACEN Elections**

In the legislative, municipal and PARLACEN elections held on 18 January 2009, 2,268,882 of the 4,226,479 voters registered in the Electoral Register cast their ballot. In absolute figures, this represents 270,868 voters more than in the previous legislative elections in 2006, mainly because only 3,801,040 voters were registered for the 2006 elections. In terms of percentages, the turnout reached 53.7%, slightly more than in the 2006 elections. Throughout the country, the turnout varied considerably, the highest being in Cuscatlán (65.4%)<sup>63</sup>, followed by Morazán (60.2%), Chalatenango and La Paz

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<sup>61</sup> In the January elections, 0.15% of ballots were challenged, whilst only 0.09% of the ballots were challenged in the March elections.

<sup>62</sup> In El Carmen, department of La Unión, only one ballot separated the PCN winner from the ARENA candidate. After the TSE's verification of the twelve challenged ballots, it declared seven votes for ARENA valid, as well as two for the PCN and one for the PDC and the FMLN respectively. As a result, the PCN lost the municipality. In Concepción Quezaltalpeque, in the department of Chalatenango, five challenged ballots were considered either invalid or blank, but the result was unaltered. In San Cayetano Istepeque, in the department of San Vicente, the TSE verified eight challenged ballots, of these, five were considered to be invalid, two were awarded to ARENA and one to the FMLN, the outcome did not change ARENA's lead in the municipality. The TSE followed the procedures established in Article 260/2 of the Electoral Code.

<sup>63</sup> Cuscatlán was the only department in which the residential vote (Polling Centres located close to the voters' places of residence, and not exclusively in municipal capitals) was established for the entire department. Compared to the 2006 elections, the turnout in this department was only 0.5% greater, probably due to the fact that a 65% turnout may already be considered as being the practical maximum.

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(59.2%).<sup>64</sup>

The legislative, municipal and PARLACEN elections produced the following results:

POLITICAL PARTIES	RESULTS FOR THE LEGISLATIVE ELECTIONS	
	VALID VOTES	% of VALID VOTES
Alianza Republicana Nacionalista - ARENA	854,166	38.55
Frente Farabundo Martí para la Liberación Nacional – FMLN	943,936	42.60
Partido de Conciliación Nacional - PCN	194,751	8.79
Partido Demócrata Cristiano – PDC	153,714	6.94
Cambio Democrático	46,971	2.12
Frente Democrático Revolucionario - FDR	22,111	1.00
TOTAL	2,215,649	100%

The elected representatives were distributed in the following manner:

POLITICAL PARTIES	SEATS IN THE LEGISLATIVE ASSEMBLY	CITY COUNCILS
Alianza Republicana Nacionalista - ARENA	32 (- 2)	122 (- 26)
Frente Farabundo Martí para la Liberación Nacional – FMLN	35 (+3)	75 (+14) *
Partido de Conciliación Nacional - PCN	11 (+ 1)	33 (-5)
Partido Demócrata Cristiano – PDC	5 (- 1)	9 (-1)
Cambio Democrático	1 (- 1)	1 (+1)
Frente Democrático Revolucionario - FDR	0 (+/- 0)	-
Coalición FMLN-CD	-	18 (+15)*
Coalición FMLN-PDC	-	2 (+2)*
Coalición FMLN-PDC-CD	-	1 (+1)*
Coalición FDR-CD	-	1 (+1)
TOTAL	84	262

*\*Given that coalitions change in each election process, it is impossible to establish a direct comparison with the number of municipalities won by the FMLN in coalitions in*

<sup>64</sup> The high turnout in Morazán and Chalatenango might be explained because numerous areas of these departments were under guerrilla control during the civil war, thus generating a greater degree of polarisation among their inhabitants. In both departments, ARENA obtained better results than the FMLN in the legislative elections.

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*2006. Considering these, the number of municipalities in which the FMLN governs as of 2009 rises to 96 (+32).*

In the PARLACEN elections, the FMLN obtained nine seats, ARENA eight seats, the PCN two seats and the PDC one seat.<sup>65</sup>

These results reflect a moderate advance of the FMLN in the Legislative Assembly and the PARLACEN, with a more significant increase at the municipal level, in both cases at ARENA's detriment.<sup>66</sup> The FMLN obtained 35 seats in the Legislative Assembly (three more than in 2006), whilst ARENA won 32 seats (two less than in the previous legislative elections). The PCN obtained eleven seats (one more than in 2006), whilst the PDC won five seats (one less)<sup>67</sup> and CD one seat (one less). The FDR did not manage to win any seats and therefore lost its accreditation as a political party, winning only 21,000 votes, compared to the required 50,000 in order to maintain its accreditation.<sup>68</sup>

These results did not change the balance of power in the Legislative Assembly very significantly. Hence, the newly elected president will be obliged to negotiate the required parliamentary votes to get his projects approved. Given that right-wing leaning parties control 48 of the 84 seats in parliament, they will be able to block any law or decree which they disagree with. The reaching of consensus will be even more important for the enactment of loans and international agreements, for which a two-thirds parliamentary majority is required.

At the municipal level, ARENA won 122 municipalities (26 less than in 2006), whilst the FMLN won 96 (32 more than in 2006), of which 21 were in coalition with the CD and/ or PDC. The PCN won 33 municipalities (five less) and the PDC nine (one less).<sup>69</sup>

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<sup>65</sup> The lack of real interest in the PARLACEN elections is not only reflected in the fact that there was no specific ballot paper for these elections, but also that the results were not included in the CD-ROM containing the official results, that the TSE distributed six days after Election Day.

<sup>66</sup> The FMLN obtained a greater number of votes than ARENA in eight of the country's 14 departments: San Salvador, Cuscatlán, La Paz, San Vicente (all of which are in the country's central region), San Miguel and Usulután (to the East), Santa Ana and Sonsonate (to the West, a region that is not traditionally favourable to the FMLN). ARENA obtained more votes than the FMLN in the six remaining departments: Ahuachapán, La Libertad (West), Chalatenango, Cabañas, Morazán (North) and in La Unión (East).

<sup>67</sup> The allocation of seats in the Legislative Assembly reflects the lack of equity in the current electoral system, which clearly favours the party coming third. The PCN, with somewhat less than 195,000 votes obtained eleven seats, while the PDC, with nearly 154,000 votes was only awarded five seats. The PCN's good result in the legislative elections was even more surprising given the limited amount of campaign activities carried out by the party.

<sup>68</sup> This falls within the traditional destiny of all previous schisms in the FMLN over the last 15 years, which have politically never been able to survive beyond their first electoral test.

<sup>69</sup> Forty-eight of the country's 262 municipalities (18.3% of them) were won by a difference of less than 100 votes. Given that at the municipal level the system of municipal councils is a single party system, (the winner obtains total control over the municipal government) and that it is relatively easy to change a voter's residence for electoral reasons, numerous complaints were heard about political parties

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In the 2009 municipal elections, 0.5% of ballots were considered blank votes, whereas the percentage of invalid votes was of 1.3%. For the legislative elections, blank votes represented 0.5% of cast ballots, and invalid ballots reached 2.8%, which seems to corroborate the perception that some sections of the population consider the municipal elections more important than the legislative elections.

Although 45% of the country's municipalities are currently under ARENA administrations and only 36% under FMLN administrations, the total population of FMLN governed municipalities is of approximately 2.8 million compared to 2 million under ARENA municipal governments, even despite the FMLN having lost the capital. This reflects the fact that the percentage of FMLN voters in the legislative elections was significantly higher among the younger segments of the population, as well as within the more educated and higher income segments, which corresponds to urban settings rather than rural environments. According to the opinion polls paid for by the FMLN as well as ARENA sympathising media, the majority of FMLN voters came from young, urban, and higher income segments, mainly male and catholic. On the other hand, ARENA's electorate had a larger proportion of women, older, less educated, lower income, rural and evangelical segments.

All of the pre-election opinion polls forecast a larger FMLN victory, as well as foreseeing that it would maintain the capital –one of its traditional strongholds. The FMLN lost the capital this year after twelve years in power, to the ARENA candidate, Norman Quijano.

One of the more interesting findings in the 18 January exit polls was that, contrary to what many analysts were expecting, voters were very aware of the different elections at stake. Around 30% of voters, voted for different parties in the different elections.

### **Presidential Elections**

The 15 March 2009 presidential elections, between the ARENA candidate Rodrigo Ávila and the FMLN candidate Mauricio Funes produced a turnout of 2,638,588 citizens, out of the 4,226,479 who were registered in the Electoral Register. In absolute figures, there was an increase of 369,706 voters as compared to the legislative elections held a few months before. In percentage terms, the turnout was of 62%, 8% greater than that for the legislative elections, but 5% less than for the previous presidential elections in 2004.<sup>70</sup> However, this turnout represents the second highest percentage obtained in the ten electoral events that have been held in El Salvador since the end of the civil

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fraudulently transferring voters from one municipality to another. EU EOM observers were witnesses to this practice.

<sup>70</sup> This may appear surprising given the closely fought election and the intensity of the campaign. The differences in turnout between these and previous presidential elections could also be an indication that the previous FMLN candidate Shafik Handal, who held the position of General Secretary of the Salvadoran Communist Party and his relative, Tony Saca, at the time ARENA candidate, polarised the electorate far more than Funes and Ávila in these recent elections.

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war.<sup>71</sup> The turnout varied considerably throughout the country, the highest being –once again- in the departments of Cuscatlán (72%), followed by San Salvador (68%) and La Libertad (66%).

The presidential and vice-presidential election produced the following results:

POLITICAL PARTY	RESULTS FOR THE PRESIDENTIAL ELECTIONS	
	VALID VOTES	% OF VALID VOTES
Alianza Republicana Nacionalista - ARENA	1,284,588	48.68
Frente Farabundo Martí para la Liberación Nacional – FMLN	1,354,000	51.32
Difference	69,412	2.64% in favour of FMLN

Broken down by departments, the results were the following:

TOTAL VOTES AND PERCENTAGES PER DEPARTMENT AND PARTY				
Department	FMLN	% FMLN	ARENA	% ARENA
San Salvador	452,263	54.53	377,161	45.47
Santa Ana	112,657	48.76	118,372	51.24
San Miguel	105,279	58	76,224	42
La Libertad	144,694	47.69	158,705	52.31
Usulután	74,902	53.01	66,407	46.99
Sonsonate	101,771	52.99	90,297	47.01
La Unión	41,918	46.01	49,197	53.99
La Paz	69,458	52.56	62,690	47.44
Chalatenango	42,174	48.47	44,831	51.53
Cuscatlán	49,946	46.04	58,529	53.96

<sup>71</sup> Of the ten electoral events held since the signing of the Chapultepec Agreements, the last four elections (from 2004 to date) have produced the highest turnouts, which would seem to indicate a renewed interest in politics on behalf of the population after a long period of apathy (turnouts of 38.5% and 41.0%), following the 1994 elections (turnout of 53.6%).

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Ahuachapán	63,855	47.72	69,958	52.28
Morazán	35,292	47.5	39,004	52.5
San Vicente	35,406	50.18	35,154	49.82
Cabañas	24,223	38.98	37,927	61.02
Out of country vote	162	55.1	132	44.9
<b>TOTAL</b>	<b>1,354,000</b>	<b>51.32%</b>	<b>1,284,588</b>	<b>48.68%</b>

As the following table shows, Funes' victory was by an unusually tight margin compared to previous presidential elections, a fact which had already been anticipated by the more sedulous opinion polls. These polls indicated a technical draw, that is to say a difference in the results that would be smaller than or equal to the margin of error in the opinion polls.

YEAR	CANDIDATES	TOTAL VOTES CAST	VOTES WON	%	% DIFFERENCE	% ABSTENTION																										
1994	<b>Calderón (ARENA)</b>	1,326,836	651,632	49.1	24.12	47.2																										
	Zamora (FMLN)		331,629	25.0			1999	<b>Flores (ARENA)</b>	1,182,248	614,268	52.0	22.91	61.4	Guardado (FMLN)	343,472	29.1	2004	<b>Saca (ARENA)</b>	2,277,473	1,314,436	55.6	21.21	32.66	Handal (FMLN)	812,519	34.3	2009	<b>Funes (FMLN)</b>	2,638,588	1,354,000	51.3	2.64
1999	<b>Flores (ARENA)</b>	1,182,248	614,268	52.0	22.91	61.4																										
	Guardado (FMLN)		343,472	29.1			2004	<b>Saca (ARENA)</b>	2,277,473	1,314,436	55.6	21.21	32.66	Handal (FMLN)	812,519	34.3	2009	<b>Funes (FMLN)</b>	2,638,588	1,354,000	51.3	2.64	37.08	Ávila (ARENA)	1,284,588	48.7						
2004	<b>Saca (ARENA)</b>	2,277,473	1,314,436	55.6	21.21	32.66																										
	Handal (FMLN)		812,519	34.3			2009	<b>Funes (FMLN)</b>	2,638,588	1,354,000	51.3	2.64	37.08	Ávila (ARENA)	1,284,588	48.7																
2009	<b>Funes (FMLN)</b>	2,638,588	1,354,000	51.3	2.64	37.08																										
	Ávila (ARENA)		1,284,588	48.7																												

The results confirm an advantage of 2.64% of valid votes (around 70,000 votes) in favour of the FMLN candidate, Mauricio Funes, compared to the ARENA candidate, Rodrigo Ávila. Overall, Funes obtained 1,354,000 votes (51.32% of valid votes), whilst Ávila won 1,284,588 votes (48.68% of valid votes).

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Due to a considerable improvement in the TSE's performance after the legislative elections, the preliminary results were available only a few hours after Polling Stations closed. The newly elected President, Mauricio Funes, abstained from prematurely declaring his victory, and made a call for national unity in his first speech. The ARENA candidate, Rodrigo Ávila, was quick to recognise his opponent's victory at the polls.

In fact, Mauricio Funes, obtained a greater percentage of votes than the FMLN in the legislative elections, combined with CD's result, as this party supported the FMLN for the presidential elections (FMLN 42.5% + CD 2.1% = 44.6%). The opposite happened to the ARENA candidate who obtained a smaller number of votes than the combined legislative results of ARENA and the parties that supported it for the presidential elections (ARENA: 38.4%, PCN + PDC + FDR: 17%, for a total of 55.4%).

Mauricio Funes won the presidential elections in practically 40% of the country's municipalities; the more densely populated urban areas were those that guaranteed his victory.<sup>72</sup> This corroborates the previously mentioned analysis of the composition of the electorate for the legislative and municipal elections.

In terms of regional voting patterns, it is interesting to note that Mauricio Funes was successful in areas that were not traditionally dominated by the FMLN. The largest difference in votes in favour of the FMLN candidate came from the Metropolitan Area of San Salvador (55% for Funes, 45% for Ávila, that is 75,000 more votes for the FMLN candidate –greater than the nation-wide difference.) Having said this, Funes also won in the eastern part of the country (53% for Funes, 47% for Ávila), an area where the FMLN has never had much influence in the past. In the West, a historic stronghold for right-wing leaning parties; both candidates obtained practically half of the votes. Nonetheless, in the fourth region of the country -the paracentral region- ARENA imposed itself with 52% of the votes, in accordance with historic trends.

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<sup>72</sup> The FMLN won in only six of the country's 14 departments, although these were the most populated ones –all of those where it obtained a majority of votes in the legislative elections, with the exception of Cuscatlán and Santa Ana. The Cuscatlán case is a good example of split-ticket voting: ARENA was the most voted party at the municipal level, losing only 3 of the 16 municipalities to the FMLN; whilst the FMLN obtained more votes than ARENA in the legislative elections; in the presidential elections the majority of the population voted for the ARENA candidate.



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**XV. RECOMMENDATIONS**

<b>EU EOM Recommendations</b>	<b>ESSENTIAL</b>	<b>DESIRABLE</b>	<b>ADDRESSED TO</b>	<b>POSSIBLE IMPROVEMENTS SUGGESTED</b>
<b>LEGAL FRAMEWORK</b>	The EU EOM recommends that a possible constitutional reform be considered in order to release the electoral administration from partisan control, allowing for an increase in citizen participation in the process, both in its permanent and temporary structures (JED, JEM and JRV)		Legislative Assembly	The electoral management body's neutrality and independence will be consolidated by reducing the partisan control of the election administration, which will also serve to increase public trust in its management and decisions.
	Given the amount of lacunae that the current Electoral Code accumulates and its lack of internal coherence, after innumerable specific amendments, it is recommended that a new more comprehensive, detailed and coherent Electoral Code be considered. Among the issues that should be developed as priorities in this new Code, the following stand out: a) A clearer definition of the specific functions and competencies of the TSE collegiate body as well as its decision-making mechanisms. b) A clearer regulation of the procedures regarding challenges and complaints on electoral matters. c) The adoption of provisions that will contribute to a better gender balance in the composition of the TSE's collegiate body and its temporary structures (JED, JEM and JRV). d) The creation of a mechanism that allows for the effective exercise of the right of suffrage for police and army personnel on active duty, hospitalised patients and detainees on remand that have not been sentenced. It would also be recommendable to establish a legal obligation for the election administration to guarantee the access of people with disabilities to Polling		Legislative Assembly	

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	Centres. e) The regulation of procedures, timeframes and conditions for the deregistration of candidates. f) The regulation of mechanisms to resolve tied votes in elections.			
	It would be desirable that the new Electoral Code regulate the sources and limits of private and/ or public financing of political party campaign spending in detail, as well as the audit of these by the TSE itself.		Legislative Assembly	Controlling campaign financing and spending guarantees a better competitive balance between political parties and furthers the transparency of the electoral process.
	In order to complete the Salvadoran legal framework for elections, the EU EOM recommends that a law to regulate the organisation, operation and ordinary financing of political parties be considered.		Legislative Assembly	
	The setting up of a more efficient and dissuasive system of sanctions for cases of violations of electoral legislation is recommended.		Legislative Assembly	
	The Electoral Code should regulate the limits to the political parties' proselytising activities during the election campaign in more detail, especially regarding the practice of "pinta y pega", by, for example, allocating predetermined spaces for each of the parties.		Legislative Assembly	This would contribute to reduce both, the often violent conflict between political party sympathisers in their struggle to spread their campaign material, as well as the indiscriminate and often excessive use of public spaces for such propaganda.
		The introduction of a prohibition on the enactment of electoral reforms in the months prior to the beginning of an electoral process should be explicitly prohibited in the Constitution, or alternatively in the Electoral Code.	Legislative Assembly	The Legislative Assembly enacted several late reforms of the Electoral Code in the run-up to the 2009 elections. The latest of which was enacted only 15 days before the elections. Although these measures were considered to be reasonable, changes to the rules of the electoral game, so late in the process are highly unadvisable as they can reduce the level of confidence in their neutrality.

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<b>ELECTION ADMINISTRATION</b>	It would be recommendable to separate the TSE's administrative and judicial functions.		Legislative Assembly	The separation of the TSE's administrative and judicial functions would enable greater efficiency in the organisation of electoral processes that could be under the responsibility of a professionalised and clearly executive directorate within the TSE and under the supervision of the TSE Magistrates. This would allow the magistrates to focus on taking judicial decisions, even against the TSE's own administrative measures, as well as functions pertaining to the Court's institutional representation. This would be, naturally more effective, within a TSE free from party interference.
	The nation-wide implementation of the residential vote would be desirable for the next elections.		TSE	The TSE could extend the residential vote to the entire country for the 2012 elections. This would bring ballot boxes closer to voters, thus avoiding, or minimising, the need for the TSE to organise public transport for voters towards Polling Centres, or even worse to leave this transport in the hands of the political parties. This measure would also lead to the disappearance and/ or relieve the overcrowding of the currently enormous Polling Centres in urban areas.
	If the nation-wide implementation of the residential-vote were to be delayed, it would be recommendable that all free transportation of voters towards Polling Centres on Election Day be organised exclusively by the TSE.		TSE	Political party organised transportation of voters towards Polling Centres creates conditions that are propitious to the inducement of voters during Election Day.
<b>SALVADORAN OUT-OF-COUNTRY VOTING</b>	The Mission recommends that the necessary mechanisms be put into place, such as consular voting, or postal voting, to enable the exercise of the right of suffrage by Salvadoran out-of-country residents, without obliging them to return physically to El Salvador to vote.		Legislative Assembly	

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<b>EQUALITY OF THE VOTE</b>	The EU EOM recommends that for future elections the Census used as a basis for the determination of the number of seats per department and the number of members of Municipal Councils to be elected, be reasonably updated.		Legislative Assembly	
<b>ELECTORAL REGISTER</b>	The EU EOM recommends that the Electoral Register be continuously purged in order to reduce the number of deceased persons still on the Register and to detect duplicate entries.		TSE, RNPN and Municipal Offices	The continuous purging of the Electoral Register by the TSE and the coordination with the various entities that feed the Register could make the Register and consequently the electoral process more reliable.
	In order to avoid changes of residence from one municipality to another for purely electoral reasons, the EU EOM recommends that, especially for municipal elections, effective proof of changes of residence be demanded of persons seeking to change their residence in the Register.		Legislative Assembly, TSE, Municipal Offices	The proof may be obtained through simple procedures, such as requesting a utility bill, a lease agreement, a contract of employment or the school registration of the household's children.
<b>NATIONAL OBSERVATION</b>	The EU EOM recommends that national election observation organisations be entitled to observe the entirety of the electoral process, in all its stages, including the final tabulation.		TSE	
<b>DIRECT ELECTION TO PARLACEN</b>	For future electoral processes, the introduction of a specific ballot paper for the election of PARLACEN parliamentarians would be a very positive measure.		Legislative Assembly	
<b>EXTENSION OF MANDATES</b>		The EU EOM considers that the extension of mandates for Legislative Assembly parliamentarians as well as for Municipal Councillors could be very positive. These mandates are currently for three-year terms; extending them might enable longer periods of	Legislative Assembly	

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		government as well as reducing the perception, held by an important part of Salvadoran citizens, of living in a permanent election campaign.		
<b>TSE TEMPORARY ORGANS</b>		If the residential vote were to be extended nation-wide, it would be desirable that JEDs and JEMs begin to operate earlier, with respect to Election Day, than in these previous elections.	Legislative Assembly and TSE	
<b>TSE TRAINING</b>		The EU EOM recommends that the TSE training of JRV members be strengthened for future elections. On the other hand, if the participation of political parties is reduced in the electoral administration, this should also put an end to political party participation in the training of JRV staff.	TSE	
<b>VOTER LISTS</b>	The Electoral Code authorises JRV members and political party agents to vote in the JRVs where they are deployed, although they are registered in another municipality or department, by manually adding their names to the Voter List. This procedure opens up the possibility for parties to mobilise an important number of voters towards municipalities where previous results have been very close. Therefore, the EU EOM recommends that the possibility of adding voters to Voter Lists on Election Day be limited exclusively to justifiable cases. These cases would include police or army personnel stationed outside their municipality of residence on Election Day. It would also be advisable to prohibit JRV members and political party agents to be deployed in		TSE	

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	municipalities where they have not been previously registered.			
<b>TSE TRANSPARENCY AND OPENNESS</b>		The EU EOM recommends that the TSE institutionalise a public register of complaints and appeals to ensure greater transparency in the electoral process.	TSE	
<b>VOTING PROCEDURES</b>		In order to improve the voting procedures, the Electoral Code could consider the replacement of ballot papers upon the request of voters who may have made a mistake while marking their choice on the ballot, before putting it in the ballot box.	TSE	
<b>POLITICAL PARTY AGENTS</b>		The excessive presence of partisan activities in JRVs, which is a traditional feature of Salvadoran elections, does not contribute to a neutral voting environment. It would therefore be advisable that the use of campaign material, such as clothing or badges by political party agents be forbidden. Their TSE accreditation should be sufficient to identify them.	TSE	

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<b>THE ELECTORAL ATTORNEY'S OFFICE</b>		Due to their vast numbers, the EU EOM recommends that for future elections, a more constant presence of Electoral Attorney Office supervisors be promoted in Polling Centres. Furthermore, it recommends that their functions and procedures be clarified.	Legislative Assembly and the Electoral Attorney's Office	
<b>MEDIA</b>	The media should ensure that they take the utmost care to maintain their objectivity and impartiality, which should be the fundamental pillars for the conduct of their informative responsibilities, especially during the coverage of election campaigns.		Media	
	The enactment of a law regulating political party access to the media and limiting party spending on propaganda in the media is recommended. Such measures would prevent the reflection of budgetary imbalances between political parties in their media campaigns.		Legislative Assembly	
		The drafting of a Media Law which protects the independence and impartiality of the media	Legislative Assembly/ Media	
	The organisation of specific programming, and its corresponding implementation, for the broadcasting of free spaces of political propaganda in equal conditions for all political parties in state-owned media, as contemplated in Article 229 of the Electoral Code.		TSE	Adopt a specific regulation on this matter.

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	It would also be advisable for the TSE to exercise greater control on smear campaigns in the media, as well as a greater commitment to ensure the respect of the period of electoral silence, according to Articles 228 and 230, respectively, of the Electoral Code.		TSE/ Media/ Political Parties and associated organisations	
		Avoid the broadcasting of institutional publicity in the media during election campaign periods.	Public Administration / TSE	
	Avoid the broadcasting by television channels of unofficial election result forecasts during Election Days, as established in Article 230 of the Electoral Code.		Media	
<b>POLITICAL PARTIES, CIVIC ASSOCIATIONS AND OTHER POLITICAL ACTORS</b>	It is recommended that independent candidates and civic committees be allowed to present candidatures for municipal elections.		Legislative Assembly	This measure would facilitate greater independent political participation by citizens.
<b>CHALLENGES AND APPEALS</b>		The introduction of more detailed procedural norms regarding the timeframes and the processing of appeals and petitions on electoral matters would be desirable.	Legislative Assembly and TSE	This would increase the transparency in the processing of appeals, thus strengthening judicial security and confidence in the process.

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