



European Union  
Election Observation Mission  
**EL SALVADOR 2019**  
Final Report



**Presidential Election**  
3 February 2019

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## ACRONYMS

<b>ACHR</b>	American Convention on Human Rights
<b>ARENA</b>	Nationalist Republican Alliance ( <i>Alianza Republicana Nacionalista</i> )
<b>ARPAS</b>	El Salvador Participative Radio Broadcasting Association ( <i>Asociación de Radiodifusión Participativa de El Salvador</i> )
<b>ASDER</b>	Salvadoran Radio Broadcasting Association ( <i>Asociación Salvadoreña de Radiodifusores</i> )
<b>AUPRIDES</b>	El Salvador Association of Private Universities ( <i>Asociación de Universidades Privadas de El Salvador</i> )
<b>A-WEB</b>	Association of World Election Bodies
<b>CC</b>	Constitutional Chamber of the Supreme Court of Justice ( <i>Sala de lo Constitucional de la Corte Suprema de Justicia</i> )
<b>CD</b>	Democratic Change ( <i>Cambio Democrático</i> )
<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women
<b>CNPRE</b>	National Election Results Processing Centre ( <i>Centro Nacional de Procesamiento y Transmisión de Resultados Electorales</i> )
<b>CONAIPD</b>	National Council for Persons with Disabilities ( <i>Consejo Nacional de Atención Integral a la Persona con discapacidad</i> )
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>DIGESTYC</b>	General Direction of Statistics and Census ( <i>Dirección General de Estadística y Censos</i> )
<b>DS</b>	Salvadoran Democracy ( <i>Democracia Salvadoreña</i> )
<b>DUI</b>	National Identity Card ( <i>Documento Único de Identidad</i> )
<b>EP</b>	Electoral Prosecutor's Office ( <i>Fiscalía Electoral</i> )
<b>EU EOM</b>	European Union Election Observation Mission
<b>FMLN</b>	Farabundo Martí National Liberation ( <i>Frente Farabundo Martí para la Liberación Nacional</i> )
<b>FPS</b>	Patriotic Salvadoran Fraternity ( <i>Fraternidad Patriota Salvadoreña</i> )
<b>FUSADES</b>	Salvadoran Trust for Social and Economic Development ( <i>Fundación Salvadoreña para el Desarrollo Social y Económico</i> )
<b>GANA</b>	Grand Alliance for National Unity ( <i>Gran Alianza por la Unidad Nacional</i> )
<b>IADC</b>	Inter-American Democratic Charter
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IRI</b>	International Republican Institute
<b>ISD</b>	Social Initiative for Democracy ( <i>Iniciativa Social para la Democracia</i> )
<b>ISDEMU</b>	Salvadoran Institute for the Development of Women ( <i>Instituto Salvadoreño para el Desarrollo de la Mujer</i> )

<b>IT</b>	Information Technology
<b>JED</b>	Departmental Electoral Management Board ( <i>Junta Electoral Departamental</i> )
<b>JEM</b>	Municipal Electoral Management Board ( <i>Junta Electoral Municipal</i> )
<b>JRV</b>	Polling Station ( <i>Junta Receptora de Votos</i> )
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender, and Intersex
<b>LTO</b>	Long Term Observer
<b>NDI</b>	National Democratic Institute
<b>NGO</b>	Non-Governmental Organisation
<b>OET</b>	Temporary Electoral Bodies ( <i>Organismos Electorales Temporales</i> )
<b>PCN</b>	Party of National Concertation ( <i>Partido de Concertación Nacional</i> )
<b>PDC</b>	Christian Democratic Party ( <i>Partido Demócrata Cristiano</i> )
<b>PDDHH</b>	Human Rights Ombudsperson's Office ( <i>Procuraduría para la Defensa de los Derechos Humanos</i> )
<b>PSD</b>	Social Democratic Party ( <i>Partido Social Demócrata</i> )
<b>PSP</b>	Progressive Salvadoran Party ( <i>Partido Salvadoreño Progresista</i> )
<b>RNES</b>	National Radio of El Salvador ( <i>Radio Nacional de El Salvador</i> )
<b>RNP</b>	National Civil Registry ( <i>Registro Nacional de Personas Naturales</i> )
<b>STO</b>	Short Term Observer
<b>TPS</b>	Temporary Protection Status
<b>TSE</b>	Supreme Electoral Court ( <i>Tribunal Supremo Electoral</i> )
<b>TVES</b>	Television of El Salvador ( <i>Televisión de El Salvador</i> )
<b>UES</b>	University of El Salvador ( <i>Universidad de El Salvador</i> )
<b>UNCAD</b>	<i>United Nations Convention Against Corruption</i>
<b>UNDP</b>	United Nations Development Programme
<b>USI</b>	Information Service Unit ( <i>Unidad de Servicios Informáticos</i> )

## I. Executive Summary and Priority Recommendations

The 3 February 2019 elections, which were the sixth presidential elections since the 1992 Peace Accords, were assessed by the European Union Election Observation Mission (EU EOM) as credible, transparent, and well-organised. Led by Chief Observer and Member of the European Parliament from Spain, Carlos Iturgaiz, the mission was deployed to the country between 26 December 2018 and 20 February 2019 in response to an invitation from the Government of El Salvador and the Supreme Electoral Court (TSE).

Three political parties and one coalition, led by the Nationalist Republican Alliance (ARENA), competed with presidential formulas. On the coalition's presidential ticket, businessman Carlos Calleja was new to politics. The Farabundo Martí National Liberation (FMLN) ticket was headed by former Minister of Foreign Affairs, Hugo Martínez. *Vamos* was founded just over one year before the elections by its presidential candidate, Josué Alvarado. The Grand Alliance for National Unity (GANU) presidential ticket was headed by Nayib Bukele, who was until March 2018 the FMLN Mayor of San Salvador. Bukele registered with GANU, but openly promoted himself as representing *Nuevas Ideas*, a party that was not competing in these elections.

While the ideologically opposed Farabundo Martí National Liberation Front (FMLN) and Nationalist Republican Alliance (ARENA) dominated the political space and managed to share governing the country over the past three decades, these elections were characterised by the participation of a third force, led by Nayib Bukele, that endeavoured to bring about an end to the country's established bipartisan political framework.

In conformity with international standards and best practices, the electoral legal framework incorporates fundamental principles for transparent and genuine elections. Nonetheless, legal lacunae and inadequate sanctions persist. Such is the case with non-dissuasive fines for violation of the election laws or violation of the campaign silence period by the media. Despite its broad investigative functions, the Human Rights Ombudsperson's Office (PDDH) has no enforcement of penalty powers.

The TSE had a short legal deadline of three days to verify candidacies and in accordance with the law consented to sworn declarations presented by the candidates. As such, the registration of presidential candidates lacked solid verification of eligibility criteria by the TSE, which introduced legal uncertainty during the elections. On election day, two appeals against the registration of presidential candidates Carlos Calleja (ARENA) and Josué Alvarado (*Vamos*) were still pending a decision at the Constitutional Chamber of the Supreme Court of Justice. These were the first presidential elections preceded by internal party primaries.

The TSE's structure, with simultaneous administrative and jurisdictional competencies, and its composition, with nominees from political parties, stems from the 1992 Peace Accords and was meant to ensure checks and balances between the most voted parties. In these elections, this system offered confidence to represented parties and uncertainty to others. The TSE was challenged when taking decisions that may have had a political implication. There were late decisions in relation to a procedural manual for the final results tabulation, removal of electoral propaganda during the campaign silence period, and contracting of technical personnel for the preliminary results system. Delayed decisions regarding key stages in the electoral process unnecessarily introduced vulnerabilities by limiting transparency and stakeholder knowledge about the process.

Logistical preparations for the elections were administered by the TSE with impartiality, transparency, and in accordance with the established election calendar. EU observers reported that some of the departmental and municipal electoral management bodies (JEDs and JEMs) were poorly resourced and staffed and that communication with TSE central structures could have benefited from better coordination. The TSE trained a sufficient number of poll workers, even though this was only the second time it was in charge of such training. EU observers reported that training on determining the validity of the ballot was unclear, and poll workers were given contradictory instructions from trainers. For these elections, the Legislative Assembly approved a 27.5 million USD budget, around 10 million USD less than requested by the TSE. Guaranteeing a realistic and consensual budget is key to protecting the TSE's independence in both its administrative and judicial functions.

Campaigning was orderly, peaceful and calm, hardly any violent incidents were registered, and fundamental freedoms of expression, movement, and assembly were generally respected. In contrast to the 2009 and 2014 presidential elections, there was a notable decrease in conventional campaign activities such as rallies. Door-to-door canvassing was the preferred strategy of most of the candidates, who also campaigned through mass media and advertising on billboards. Nayib Bukele ran his campaign mainly on TV, Radio, and social networks (Facebook, Twitter). His campaign centred around corruption scandals and the poor economic and security environment, which appealed to ordinary citizens who felt that their concerns were disregarded by the political elite. Bukele also used social networks to criticise the integrity of the electoral authority and repeatedly emphasised his suspicions of fraud, which were unsubstantiated.

Campaigning costs are covered by both private and public funding. The Electoral Law establishes that political parties receive public financing (*deuda política*) based on the vote share the party received in the previous presidential elections. Parties could request an advance of up to 70% of their public financing entitlement. Apart from public funding, candidates and political parties could receive unlimited private funding in cash or in kind, with certain legal limitations. According to *Acción Ciudadana* media monitoring, parties spent a collective 25.8 million USD on paid media advertising during the four-month campaign period. GANA spent 9.5 million USD, ARENA 8.4 million, and FMLN 7.7 million. While there is a legal obligation to reveal funding sources, the TSE lacks the capability to undertake a timely verification of the same.

Freedom of expression was respected during the campaign period, and journalists were generally able to report freely. A few private media groups with clear political and economic interests dominate most of the media in the country. Findings from EU EOM media monitoring reflect that state media TVES and RNES openly favoured Hugo Martínez and the ruling party. Some private media made a more equitable distribution of airtime among contestants, but showed imbalances in the tone of their coverage, mainly favouring ARENA and FMLN and discrediting GANA. During the monitoring period, Nayib Bukele was the candidate receiving the largest amount of negative reporting. Smear campaigning was present on Internet, social media, and traditional media. The campaign silence period was violated by most of the candidates and several party representatives through TV interviews and press conferences broadcast live on election day.

Women comprise 53.3% of registered voters, yet continue to be underrepresented in the majority of elected positions, in government, and in decision-making positions.<sup>1</sup> None of the four competing parties championed a female candidate for the presidency; two women vice-presidential candidates were elected in party primaries by ARENA and FMLN. Verbal aggression with sexist remarks, especially on social media, against female candidates was recurrent and widespread throughout the campaign period. A Pact for the Guarantee of the Rights of Salvadoran Women in the 2019 Election, signed by all parties, called on contenders to use inclusive and non-sexist language and to avoid any type of aggression against women during the campaign.

Election day was calm and generally well-organised. Polling stations mostly opened on time and were staffed with trained poll workers. In polling stations observed by the EU, women made up 55.3% of the committees. The presence of party agents in almost all observed polling stations contributed to the transparency of the process, although partisan activities both in and around polling centres contravened the electoral silence period and did not contribute to a neutral voting environment. The EU EOM assessed the overall conduct of polling operations as good or very good in 99% of observed polling stations and described the process as calm and orderly. EU observers described the counting process as transparent with poll workers performing professionally. Party agents received a copy of the polling station results protocol and were able to verify these against official results at the national level. There were few complaints submitted on polling day.

For the first time, the TSE implemented an in-house electronic system for transmission and tabulation of preliminary results. The transmission and data processing progressed at a brisk pace, and by 23:00 on election day the TSE already received over 90% of all protocols, which allowed them to provide a reliable projection of results as planned. Although the dedicated website to project results failed, TSE social media platforms as well as live media broadcasts kept the public informed. The tabulation of final results, based on the 9,568 original polling station results protocols, was officially launched on 5 February and completed within two days. Contrary to previous elections, the PDDH was not granted full access to the tabulation. Party agents and members of state institutions were always present during the tabulation exercise. EU observers assessed the process as transparent and orderly.

As the GANA candidate obtained an absolute majority, with more than a 20% lead over the next competitor, no run-off was required, and Nayib Bukele was declared president-elect of El Salvador. Nayib Bukele and Félix Ulloa (GANAs) won the elections with 1,434,856 votes (53.10%). Carlos Calleja and Carmen Aída Lazo (ARENA, PCN, PDC, DS coalition) were the second most voted with 857,084 votes (31.72%), Hugo Martínez and Karina Sosa (FMLN) obtained 389,289 votes (14.41%), and Josué Alvarado and Roberto Rivera (*Vamos*) 20,763 votes (0.77%). Invalid and challenged ballots amounted to 26,345 (0.96%) and 1,973 (0.07%), respectively, and turnout reached 52%. GANA had the strongest result in all 14 departments of the country, and in 195 of the 262 municipalities. The vote of the Salvadoran diaspora proved to be less significant than expected, as fewer than 4,000 cast a ballot in these elections.

#### Priority Recommendations:

1. Calibrate administrative and penal sanctions for electoral infractions and crimes in order to achieve a more effective electoral justice with sanctions that are dissuasive and proportional.

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<sup>1</sup> The current Legislative Assembly fulfilled the mandatory 30% quota with 26 women elected in 2018, one less when compared to the previous legislature. As for local government, only 11% of women were elected mayors.

2. Establish clear provisions for determining the validity of the ballot, ensuring prevalence of the voter's intention, and include comprehensive criteria of what constitutes a valid or invalid vote in order to avoid confusion and partisan interpretations.
3. In the context of a renewed political landscape, in order to safeguard TSE jurisdictional and administrative functions and foster confidence, initiate a debate involving the widest possible spectrum of stakeholders on a possible reform of TSE structure and/or composition.
4. Allow independent candidates to run for presidential elections.
5. Disengage state media from direct government control and convert state media into genuine public service broadcasters with editorial independence.
6. Improve the TSE's capacity to fulfil its obligations to audit political financing, including internet advertising, and adopt adequate and proportional sanctions for non-compliance.

## II. Introduction

At the invitation of the government of El Salvador and the Supreme Electoral Court, the European Union deployed on 26 December 2018 an Election Observation Mission to observe the 2019 presidential polls. The mission was led by Chief Observer and Member of the European Parliament from Spain, Carlos Iturgaiz. A Core Team of nine analysts arrived in the country on 26 December. The mission was strengthened with the arrival of 28 Long Term Observers (LTOs) on 3 January and the integration of 28 Local Short Term Observers (STOs) on 26 January. In addition, the mission was joined by Short Term Observers from the EU member states diplomatic community resident in El Salvador. This brought the full complement of EU observers to 82. Observers were drawn from 25 EU member States as well as Norway.

The EU EOM remained in the country to observe final results tabulation and post-election developments. In this, its final report, the EU offers detailed recommendations for areas of improvement. The EU EOM assessed the whole electoral process against international standards for democratic elections as well as the laws of El Salvador. The EU EOM was independent in its findings and conclusions and adhered to the Declaration of Principles for International Election Observation signed at the United Nations in October 2015.

## III. Political Context

**These elections were characterised by the emergence of a third political force that threatened to disrupt the country's bipartisan political framework. Many of the contenders were new to politics.**

On 3 February 2019, Salvadorans went to the polls to elect a president and vice-president on a joint ticket for a five-year mandate. These were the sixth presidential elections since the

1992 Peace Accords. Three political parties (FMLN, GANA, *Vamos*)<sup>2</sup> and one coalition (ARENA, PCN, PDC, DS)<sup>3</sup> competed. While the ideologically opposed FMLN and ARENA dominated the political space and managed to share governing the country over the past three decades, these elections were characterised by the participation of a third force, led by Nayib Bukele, that endeavoured to bring about an end to the country's established bipartisan political framework.

On the coalition's presidential ticket, businessman Carlos Calleja and his running mate, economist Carmen Aída Lazo, were both new to politics. The FMLN ticket was headed by former Minister of Foreign Affairs, Hugo Martínez, with lawyer and Legislative Assembly Deputy, Karina Sosa, as his running mate. *Vamos* was founded just over one year before the elections by its presidential candidate, Josué Alvarado. His vice-presidential candidate, Roberto Rivera, is known for his work with civil society organisations. The GANA presidential ticket was headed by Nayib Bukele, who was until March 2018 the FMLN Mayor of San Salvador. His running mate was Felix Ulloa, a lawyer and former TSE magistrate. Bukele and Ulloa registered with GANA, but both candidates openly promoted themselves as representing *Nuevas Ideas*, a party that was not competing in these elections.

The President of El Salvador enjoys extensive powers, and is elected for a five-year term that can be repeated only after two further mandates have expired. A candidate is elected president if they secure an absolute majority of valid votes.

#### IV. Implementation of Previous EOM Recommendations

**Key 2018 EU EOM recommendations could not be addressed due to a prohibition to amend electoral laws one year before elections. The ideal period for undertaking reform runs from now to March 2020, that is, one year ahead of the 2021 legislative and municipal polls.**

The European Union observed the 2018 legislative and municipal elections and at that time made a series of recommendations. The key recommendations offered by the EU EOM 2018 still hold and included the need to calibrate administrative and penal sanctions for electoral infractions and electoral crimes in order to achieve a more effective electoral justice; to enhance the consistency of the final results tabulation process with clear criteria for the review of results protocols, correction of errors and recounts; to improve the TSE's capacity to fulfil its obligations to audit political financing and adopt adequate and proportional sanctions for non-compliance; to introduce appropriate laws regulating the media.

The 2018 recommendations which required amendments to the election laws could not be implemented before these elections due to a legal requirement that prohibits changes to the election laws during a one-year period prior to elections. This provides legal certainty and is in line with international good practice. In conformity with this provision, no amendments were introduced in the interim period since the 2018 legislative and municipal elections. Some of the 2018 recommendations that did not require a legislative change were addressed, for instance, the TSE published a procedures manual for the tabulation of final results that included criteria to resolve inconsistencies and mathematical errors in the polling station results protocols.

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<sup>2</sup> *Frente Farabundo Martí para la Liberación Nacional* (Farabundo Martí National Liberation Front – FMLN), *Gran Alianza por la Unidad Nacional* (Grand Alliance for National Unity – GANA).

<sup>3</sup> The Coalition for a New Country (*Coalición por Un Nuevo País*) was comprised of *Alianza Republicana Nacionalista* (Nationalist Republican Alliance – ARENA), *Partido de Concertación Nacional* (Party of National Concertation – PCN), *Partido Demócrata Cristiano* (Christian Democratic Party – PDC), *Democracia Salvadoreña* (Salvadoran Democracy – DS).

Many electoral reforms prior to 2018 were in line with previous EU mission recommendations. These included recommendations aimed at improving the multiparty system, strengthening the independence and transparency of the electoral administration, the control of political party financing, and ensuring political rights for all citizens. At that time, the Constitutional Chamber of the Supreme Court of Justice (CC) introduced electoral reforms that were seen as democratic advances, such as the introduction of independent electoral staff, new criteria for internal party elections, and cross-voting.<sup>4</sup> These reforms were criticised by the TSE and the Legislative Assembly, as they were introduced without wide consultation with stakeholders. It was argued that the CC decisions added excessive complexity to the election system. It can equally be argued that inaction by other sovereign bodies compelled the Chamber into action.

No significant legal amendments were introduced between the 2018 legislative and municipal and 2019 presidential elections, and the CC did not issue any new rulings to further modify the electoral system or procedures.

The ideal period for undertaking electoral reform is between the 2019 elections and March 2020 – one year ahead of the 2021 legislative and municipal polls. The recommendations offered in this report, in addition to those made by previous EU and other international and national election observation missions, can contribute to stakeholder debate. The Commission for Electoral and Constitutional Reform at the Legislative Assembly, with contributions from the TSE and civil society, constitutes a multi-party political space for discussing and advancing electoral reforms. The TSE, civil society, and the Commission have an opportunity to identify common opinions and implement meaningful reforms shared by all actors.

## V. Legal Framework

**The legal framework provides an adequate basis for transparent and genuine elections. Past decisions issued by the Constitutional Chamber of the Supreme Court of Justice triggered substantive reforms to the electoral system, but legal lacunae and inadequate sanctions persist.**

### A. International Principles and Commitments

The Constitution and its several amendments incorporate all international and regional treaties concerning human rights and political participation ratified by El Salvador. The legal framework provides a sufficient basis for the conduct of democratic and competitive elections. Ratified international treaties include the 1966 International Covenant on Civil and Political Rights, the 1966 International Convention on the Elimination of Racial Discrimination, the 1952 Convention on the Political Rights of Women and the 2006 Convention on the Rights of Persons with Disabilities. Regional treaties include the Charter of the Organization of American States, the 1969 American Convention on Human Rights, the Inter-American Convention on the Granting of Political Rights to Women and the 1996 Inter-American Convention against Corruption.

### B. Constitutional Human Rights

The Constitution of El Salvador offers ample protection of fundamental human rights and political rights, including the freedoms of expression, association, thought, information and opinion. The fundamental principle of equality is guaranteed, as is the right to constitute political parties and the right to vote without discrimination of race, gender or other. The

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<sup>4</sup> Cross-voting is a list system permitting a voter to select names from more than one party list.

right to stand for elections is limited by a few constitutional criteria, such as the requirement of fiscal probity for candidates and the criteria for the elimination of any possible conflict of interest between the candidate and the state.<sup>5</sup>

Over the past 27 years, the Human Rights Ombudsperson's Office (PDDH) pursued its constitutional mandate to supervise the implementation of and respect for civil and political rights, including during electoral processes. In promoting accountability of state institutions and advancing respect for the rule of law, the Ombudsperson has ample investigative authority but lacks sanctionary powers. Ahead of the 2019 polls, the Ombudsperson's Office also oversaw the TSE's performance during the registration of *Nuevas Ideas* and the cancelation of *Cambio Democrático*. At the time of writing, reports on these activities were pending.

### C. Electoral Legislation

The main laws applicable to the 2019 presidential elections included the 1998 Constitution, the 2013 Electoral Code, the 2013 Political Party Law and its Regulation, the 2013 Special Law for Out-of-Country Voting, the 2014 Regulation on Domestic and International Observation and the Penal Code.<sup>6</sup> An important set of jurisprudential decisions issued by the Constitutional Chamber following petitions on the constitutionality of election laws triggered important electoral reforms in the past, which impacted the electoral system and the implementation and organisation of subsequent electoral processes.

The electoral legal framework incorporates fundamental principles for transparent and genuine elections. Nonetheless, legal lacunae and inadequate sanctions persist. Such is the case with non-dissuasive fines for violation of the election laws or violation of the campaign silence period by the media. The 2018 EU EOM final report recommended a revision of the electoral legal framework to address gaps and inconsistencies.

To complement the legal framework, the TSE issued several guidelines for the 2019 polls, including for polling station members and departmental and municipal electoral board staff. It also produced a manual for tabulation of final results, a guide for facilitating the vote for persons with disabilities, and an information sheet for voters from the LGBTI community.

### D. Election System

The president is elected from a nationwide constituency through an absolute majority system with the possibility of a second round if no candidate obtains 50% plus one of the valid votes. A second poll is foreseen in the law and must be held within 30 days following the final results announcement of the first round and exhaustion of the appeals period. The presidential term of five years can be repeated, but the Constitution forbids consecutive mandates. The legal framework does not provide for independent presidential candidates, as all candidates must be affiliated to a political party. This may not be entirely in line with El Salvador's international obligation to protect the right of every citizen to take part in public affairs.

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<sup>5</sup> One such conflict of interest is if the candidate is involved in a concessionary company, that is, a company that holds a negotiated contract with the government.

<sup>6</sup> Additional laws pertaining to elections include the 1995 National Registry of Natural Persons Law and its Regulation 1995, the 2001 Law on the Issuing of the Identity Document, the 2005 Rules for the Residential Vote and the 2014 Regulation of Election Observation. Article 295 of the Penal Code regulates nine criteria of electoral fraud.

## VI. Election Administration

**Well-organised logistical preparations proceeded according to the electoral calendar. The TSE membership structure offered confidence to represented parties and uncertainty to others.**

### A. Structure and Composition of the Election Administration

The election administration is composed of the Supreme Electoral Court and the Temporary Electoral Bodies (OET): 14 Departmental Electoral Boards (JED), 262 Municipal Electoral Boards (JEMs), and 9,568 Polling Stations (JRVs).<sup>7</sup> The TSE, the highest electoral authority with administrative and judicial powers, is a permanent body composed of five members and their alternates appointed by the Legislative Assembly for a five-year mandate. Three members are selected from shortlists proposed by the three parties that obtained the highest number of votes in the previous presidential elections. The remaining two are appointed from shortlists proposed by the Supreme Court. TSE magistrates cannot have political affiliation.<sup>8</sup> The term of the current TSE expires in July 2019.

The structure and composition of El Salvador's election administration stems from the 1992 Peace Accords and was meant to ensure checks and balances between the most voted parties. In these elections, this system offered confidence to represented parties and uncertainty to others. During the pre-election period, contending candidatures not represented in the TSE tended to question its independence and ability to deliver credible elections.

*In the context of a renewed political landscape, in order to safeguard TSE jurisdictional and administrative functions and foster confidence, the EU EOM recommends initiating a debate involving the widest possible spectrum of stakeholders on a possible reform of TSE structure and/or composition.*

Members of the temporary departmental and municipal electoral boards (JEDs and JEMs) are proposed by the contending political parties or coalitions. For these presidential elections, the four contesting candidatures proposed one member (and one alternate) to each of the JEDs, JEMs and almost all JRVs.<sup>9</sup> Following a Constitutional Chamber ruling in 2015, members of the temporary electoral bodies cannot have political affiliation, a decision that has encouraged their partial depoliticisation. In line with the provisions of the Electoral Code, the decision recognised the right of the political parties to propose persons who were not formally or materially linked to the party.<sup>10</sup> In practical terms, although the TSE reviewed all proposals against lists of party members and found no affiliations, EU observers reported that JED, JEM and polling staff members maintained ties with the proposing parties, for instance by receiving stipends or assistance.

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<sup>7</sup> 9,558 in-country polling stations and 10 for the out-of-country voting.

<sup>8</sup> Decision SCCSJ 18/2014 of June 2014: "The Legislative Assembly cannot integrate the TSE with persons with party affiliation, as this is incompatible with the exercise of jurisdictional functions, including electoral jurisdiction."

<sup>9</sup> GANA and the Coalition proposed members to all 9,558 in-country polling stations, FMLN to 9,527 and VAMOS to 971 polling stations. (Source: TSE).

<sup>10</sup> Decision (SCCSJ 139/2013) issued in 2015: "Political parties have the possibility of proposing the persons who will make up the [JED, JEM and JRV], but this does not represent, from a constitutional point of view, an entitlement for the subjective conformation of such electoral bodies to be made with persons who are formally or materially linked with political parties."

*The EU EOM recommends continuing to untie the TSE from partisan influence through the depoliticisation of its temporary structures and administrative units to ensure its neutrality and independence from the political parties.*

The TSE membership structure, with nominees from political parties, resulted in delays in taking decisions that had or might have had a political implication. The procedural manual for the final results tabulation, drafted in November 2018, was only circulated on the first day of the tabulation. A TSE decision on removal of party propaganda outside of one of the main voting centres in the country was taken late. The TSE published the distribution of free airtime on state radio and television for contenders, conveying their decision on the same day the free airtime period began. The absence of an official response to a request to conduct a parallel vote tabulation, as part of citizen observation activities, created unnecessary distress and uncertainty to the requesting group. The system for transmission of preliminary results may have suffered from late contracting of technical personnel. Delayed decisions regarding key stages in the electoral process introduced vulnerabilities by limiting transparency and stakeholder knowledge about the process, and therefore reduced their confidence in the electoral authority.

The TSE and political parties took several controversial, if legal, decisions affecting the layout of the ballot paper and the polling station results protocol. Four main legal requirements triggered these decisions: a 2013 Constitutional Chamber decision<sup>11</sup> confirmed legal provisions regarding appearance of the party name on the ballot paper; public campaign finance subsidies are allocated according to the number of votes each party receives; coalitions may use one logo on the ballot to represent the coalition or all the individual party logos;<sup>12</sup> voters can mark two or more parties within a coalition on the ballot paper.<sup>13</sup> The four political parties in the coalition decided that each would have its own logo on the ballot. This resulted in a ballot paper with seven logos, even though there were only four candidatures, and no candidate names. Moreover, coalition members were not identified or grouped together on the ballot. In line with the ballot design, the polling station results protocol included fields for the seven contesting parties and an additional field to attribute votes for the coalition.<sup>14</sup>

While the low number of invalid ballots (0.96%) may indicate that voters were familiar with party symbols and flags, the ballot paper was clearly designed to please political parties and not voters.



<sup>11</sup> Decision (SCCSJ 16/2012) issued in September 2013, Electoral Code Article 185(a).

<sup>12</sup> Article 41c and d, Law on Political Parties.

<sup>13</sup> Article 207, Electoral Code.

<sup>14</sup> The design of the polling station results protocol was approved by the TSE with a dissenting opinion of its president.

## B. Administration of the Elections

Election preparations were adequate and generally on time. EU observers reported that JEDs and JEMs functioned well, although their involvement was limited to managing polling staff proposals and offering logistical support. EU EOM observers reported that some JEDs and JEMs were poorly resourced and staffed and that communication with TSE central structures could have benefited from better coordination. Reportedly, most JED and JEM decisions were taken by consensus, indicating that members worked in a constructive and cooperative manner despite their different political allegiances. For these elections, the Legislative Assembly approved a 27.5 million USD budget, around 10 million USD less than requested by the TSE. Guaranteeing a realistic and consensual budget is key to protecting the TSE's independence in both its administrative and judicial functions.

*The EU EOM recommends strengthening institutional capacities of the election management body by guaranteeing the necessary legal support and coherent and consistent communication between all levels of the TSE.*

The TSE trained a sufficient number of poll workers, even though this was only the second time it was in charge of such training. In an outreach to stakeholders, the TSE provided non-compulsory training to party agents, journalists, and police. EU observers reported that training on determining the validity of the ballot was unclear, and poll workers were given contradictory instructions. The TSE acknowledged the problem, explaining there was an interrupted line of command between the training unit and facilitators as a result of trainees answering to the parties that proposed them rather than to TSE facilitators.

*The EU EOM recommends establishing clear provisions for determining the validity of the ballot, ensuring prevalence of the voter's intention, and include comprehensive criteria of what constitutes a valid or invalid vote in order to avoid confusion and partisan interpretations.*

## VII. Voter Registration

**The right to vote is protected by an inclusive system, although some restrictions and lack of administrative provisions disenfranchised potential voters and are at odds with El Salvador's international commitments.**

### A. The Right to Vote

All Salvadoran citizens over the age of 18 have the constitutional right of suffrage. Although voting is also considered a political duty, it is not compulsory in El Salvador. The Constitution and the Electoral Code restrict this right for persons who were disenfranchised as a result of a felony conviction, regardless of whether they were sentenced to prison.<sup>15</sup> According to the TSE, a total of 5,875 convicted citizens were removed from the voter register. This number does not include those already removed for the 2018 elections and whose sentence was still in force for these elections. As no provision was made by the TSE to facilitate voting for the 12,538 detainees awaiting trial, these voters were also effectively disenfranchised.<sup>16</sup> These restrictions place El Salvador at odds with the International Convention on Civil and Political Rights (ICCPR) by limiting the universality of suffrage.<sup>17</sup>

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<sup>15</sup> According to the Report on Prison Statistics of the Ministry of Justice, as of February 2019, the number of Salvadorans serving prison sentences amounted to a total of 27,144 persons.

<sup>16</sup> Source: Ministry of Justice, Report on Prison Statistics, February 2019

<sup>17</sup> Article 25(b) ICCPR, General Comment 25, para. 10 and 11, ICCPR GC 21, para. 3. "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right."

*The EU EOM recommends that the TSE ensures that all registered voters can effectively exercise their right to vote, including those being held in detention awaiting trial.*

The legislation also restricts voting rights for persons of “notoriously flawed conduct,” introducing a subjective criterion for exclusion of those advocating for the re-election of the president, and those who have been declared legally incompetent or of unsound mind. The latter is inconsistent with provisions in the Convention on the Rights of Persons with Disabilities (CRPD) and related jurisprudence.<sup>18</sup>

*The EU EOM recommends removing limitations on the right to vote based on subjective grounds, such as notoriously flawed conduct, and limitations affecting freedom of expression, such as advocating for the re-election of the president. Consider enfranchisement of convicted citizens; deprivation on the right to vote should pursue a legitimate aim, be objective and reasonable.*

*The EU EOM recommends removing limitations on the right to vote based on declaration of legal incompetence or unsound mind.*

## B. Voter Registration Procedures

There were 5,268,411 registered voters for these presidential polls, an increase of 1.46% over the 2018 legislative elections. Salvadorans are included in the voter register when they reach the age of majority (18) and are issued a national identity card (DUI) by the National Civil Registry (RNPN). The first DUI is free, and subsequent renewals cost 10 USD. A valid DUI is the only accepted document for voter identification at the polling station.

A recurrent issue in El Salvador is the high number of expired DUIs that need to be renewed ahead of election day. Some efforts were made to encourage citizens to renew their DUIs. The Legislative Assembly allocated 2 million USD, which allowed around 200,000 DUIs to be issued free of charge during December 2018 and January 2019. However, as no criteria were set as to who was entitled to a subsidised DUI, all citizens who renewed their identity card during the funding period did so free of charge. Introduction of an income criterion could have ensured that low income voters were the primary beneficiaries of the initiative. A few days before elections, the RNPN informed that only 4,911,000 DUIs were valid, as such some 350,000 registered voters were ineligible to vote, including around 300,000 citizens who never requested a renewal since introduction of the DUI in 2001. Renewals could only be made at one of the 24 RNPN offices throughout the country. These offices were located in department capitals and larger cities, and arguably provided insufficient renewal opportunities for voters residing outside urban areas.

The voter registry closed on 6 October 2018, four months before election day. Those who came of age between the closing of the voter register and election day could make an early application for a DUI to ensure their inclusion in the voter register. Only 2,147 of the 43,757 eligible first-time voters in this category requested a DUI. Inadequate communication of this possibility may be at least partially responsible for this low number.

Political contenders did not express concern about the quality of the voter register. Notwithstanding, issues identified by previous EU missions remain, such as the inclusion of a

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<sup>18</sup> The Convention on the Rights of Persons with Disabilities (CRPD) Committee’s interpretation of CRPD Articles 12 and 29 states that mental incapacity should not serve as a basis for the deprivation of the right to vote and to be elected, under any circumstances: “A person’s decision-making ability cannot be justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote.” Also, CRPD Committee, 2013, Zsolt Bujdosó and others v. Hungary.

number of deceased voters. The 2019 voter register included 350,638 out-of-country voters, a number that appears to be inconsistent with the large number of Salvadorans living abroad.<sup>19</sup> Comprehensive audits of both the voter and DUI registers could contribute to assess the extent of inaccuracies and identify solutions to achieve improved reliability.

#### *Registration of out-of-country voters*

The legislation allows non-resident Salvadorans to vote in presidential elections. In order to be included in the voter register, eligible voters had to make an active online application, through which voters could submit their address and scanned DUI in order to receive an absentee ballot. Only 5,468 of the 350,638 eligible out-of-country voters registered. Low registration rates might be linked to several factors, including the lack of a valid DUI (as the application automatically rejected those who tried to register with an expired DUI), poor Internet literacy or access, or voter fears associated with highlighting their irregular residency status abroad.

*The EU EOM recommends ensuring a more accurate voter register by undertaking a comprehensive updating of the National Registry (RNPN), including easing existing requirements and procedures for citizens living abroad to update their residence status.*

### VIII. Internal Party Primaries, Registration of Candidates, and Political Parties

**These were the first presidential elections preceded by mandatory internal party primaries, which were reportedly not always competitive. Deficiencies were observed with the TSE's delayed registration and untimely de-registration of some political parties.**

#### A. Internal Party Primaries and Registration of Candidates

The Political Parties Law obliges each political party to determine its candidates through mandatory internal primary elections in which all registered party members can vote. Primaries are organised by the respective party and are not supervised by the TSE. These were the first presidential elections preceded by internal party primaries. There was no female candidate running for the presidency, while two vice-presidential female candidates were elected by ARENA and FMLN.

EU EOM interlocutors reported that not in all cases were primaries competitive, and the number of choices varied. ARENA and FMLN were perceived as having the most competitive primaries. ARENA presented three candidates that engaged in a protracted and intense competition won by Carlos Calleja. FMLN originally had only one candidate, Gerson Martínez, who was chosen by the party's leadership. After requests from party cadres and militants, primaries were conducted between Gerson Martínez and former Minister of Foreign Affairs, Hugo Martínez, with the latter being the people's choice. GANA's presidential candidate, Will Salgado, resigned when Nayib Bukele registered at the last minute. As such, GANA's primaries were a mere ratification of Bukele's candidacy. PCN, PDC and *Vamos* only had one candidate each in their respective primaries.

The conduct and results of the primaries were challenged with two petitions against GANA's election and one each challenging ARENA's candidate Carlos Calleja and FMLN's candidate Hugo Martinez. The TSE rejected all petitions on procedural grounds. The petitioner's arguments against ARENA's candidate Calleja were based on his alleged lack of legitimacy

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<sup>19</sup> Reliable figures on the number of Salvadorans living outside the country are scarce and fluctuate between 2,800,000 and 1,600,000, depending on the source. Sources: Ministry of Foreign Affairs and United Nations Organisation.

to stand due to his acquired Salvadoran nationality. The GANA candidate's probity was questioned. As for the FMLN candidate, Hugo Martínez, the petitioner claimed that his past as a civil war combatant disqualified him to stand.

Following the TSE process of verification of constitutional requirements and ineligibility criteria to stand as a candidate, the four presidential and vice-presidential joint tickets were registered by the TSE during the period of 15-26 October. During the registration, the TSE verified candidacies within a short legal deadline of three days, and according to the law, consented to sworn declarations presented by the candidates. As a general practise in previous elections, the TSE does not cross-check information with other state institutions,<sup>20</sup> and sworn declarations can be disputed after candidacies are approved.

*The EU EOM recommends introducing mechanisms to allow the TSE to verify the authenticity of declarations within the legal registration period for candidates.*

The registration of presidential candidates lacked solid verification of eligibility criteria by the TSE, which introduced legal uncertainty during the elections. On election day, two appeals against the registration of presidential candidates Carlos Calleja and Josué Alvarado were still pending a decision at the Constitutional Chamber (CC).

*The EU EOM recommends allowing independent candidates to run for presidential elections.*

#### B. Registration and De-Registration of Political Parties

The Election Law does not set out discriminatory requirements for party registration, although at least 50,000 signatures must be provided in support of the application to register as a political party.<sup>21</sup> This, perhaps excessive, number of signatures, corresponds to the number of votes a party must obtain in legislative elections in order to avoid cancellation of its registration. To compete in presidential, legislative or municipal elections, a party must be registered at least eight months prior to those elections.<sup>22</sup> Six of the seven competing parties registered prior to 2013, and the newer *Vamos* party registered in November 2017. Four previously registered parties formed a coalition for these elections within the four-month deadline prior to election day.

Nayib Bukele's party, *Nuevas Ideas*, registered on 10 September 2018. The party missed the legal deadline to participate in the presidential elections, as internal party elections to select the presidential ticket had to be held by 4 April 2018. The Human Rights Ombudsperson observed the party's registration and concluded that the process presented some deficiencies and that the TSE deliberately delayed the party's registration. The party submitted triple the legally required number of signatures. The TSE claimed this dramatically slowed the registration process.

On 25 and 26 July 2018, the TSE de-registered four political parties. In its decisions, the TSE adopted a strict interpretation of the electoral law and dismissed the opposing views of the Attorney General and the Electoral Prosecutor. The TSE's arguments for de-registration were based on the rationale of an existing legal threshold (50,000 votes or one deputy) aimed at eliminating excessive proliferation of political parties and the existence of parties without significant support.

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<sup>20</sup> Constitution, Article 127, 1 to 6. Following the registration by the TSE, three formal appeals were presented by citizens - two against the registration of ARENA's candidate and one against GANA's candidate. Appeals were based on the same arguments used to challenge the internal primaries and rejected by the TSE on procedural grounds.

<sup>21</sup> Political Parties Law, Art. 13(b).

<sup>22</sup> Political Parties Law, Art. 19.

The de-registration of Democratic Change (*Cambio Democrático* – CD) generated controversy, as Nayib Bukele was supposed to be its presidential candidate. In 2015, the TSE decided by a simple majority vote to maintain CD’s registration despite legal cause for the party’s cancellation. The TSE requested a legal opinion from the CC on the constitutionality of the threshold, and only in 2018 did the CC instruct the TSE to review its 2015 decision, as it required a qualified majority vote. The Electoral Law does not prescribe how to proceed to de-register a party, if by simple or qualified majority vote. On 25 July 2018, the TSE voted to cancel CD following the CC ruling, without taking into consideration the principle of legal security and the fact that in the interim period CD had participated in legislative elections and gained a deputy to the Legislative Assembly. Bukele publicly criticised the TSE for what seemed a politically motivated decision and a pattern of deliberate obstruction of his candidacy.

The Progressive Salvadoran Party (*Partido Salvadoreño Progresista* – PSP) was de-registered for not having participated in two consecutive elections for the Legislative Assembly. The TSE also cancelled the Social Democratic Party (*Partido Social Democrata* – PSD) and the Patriotic Salvadoran Fraternity (*Fraternidad Patriota Salvadoreña* – FPS) for missing the legal threshold.

*The EU EOM recommends setting clear timeframes, deadlines and/or procedures to guarantee timely resolution of all electoral legal opinions and appeals by the Constitutional Chamber to give effects to rights (including right to participate in public affairs and freedom of assembly) and ensure the right to an effective remedy.*

## IX. The Election Campaign

**An orderly and peaceful campaign period included conventional campaign activities as well as a robust use of social media. Political platforms lacked policy content and were more centred around discrediting competitors.**

### A. The Election Campaign

The 120-day official campaign period started on 3 October 2018, although pre-campaigning had been ongoing since late 2017, especially by ARENA’s two main contenders for the presidential ticket. EU EOM interlocutors reported that a long period of campaigning contributed to election fatigue. The TSE and the Electoral Prosecutor’s Office did not dispose of the necessary resources to follow up on all violations of campaign regulations, including pre-campaign electoral propaganda.

Campaigning was orderly, peaceful and calm, hardly any violent incidents were reported apart from a few scuffles between Bukele supporters and ARENA activists, and fundamental freedoms of expression, movement, and assembly were generally respected. In contrast to the 2009 and 2014 presidential elections, there was a notable decrease in conventional campaign activities such as rallies. Door-to-door canvassing was the preferred strategy of most of the candidates, who also campaigned through mass media and advertising on billboards.

Bukele ran his campaign mainly on TV, Radio, and social networks (Facebook, Twitter). He used social networks to criticise the integrity of the electoral authority and repeatedly emphasised his suspicions of fraud. These suspicions were unsubstantiated, and no formal complaints were ever lodged. In reaction to one of his tweets, on 6 December a few hundred *Nuevas Ideas* militants blockaded and partly occupied the TSE headquarters. Campaigning on the veracity of public opinion polls, Bukele claimed that a loss for him in the first round could only be explained by an orchestrated results manipulation.

An important moment in the campaign was the televised debate between three of the four presidential candidates. However, the debate amounted to a venue for sharing political platforms rather than a real dialogue. Bukele, who did not participate, launched his government plan in what was touted as a live transmission during the same timeslot as the debate. The candidate came under criticism when it was discovered the live event was in fact pre-recorded and that parts of his plan had been plagiarised from the current government's health plan, academic publications, and confidential police data relating to mapping of criminal gangs.

Another significant event was the signing of an anti-corruption agreement, to which all four presidential candidates were invited. The only participants were the vice-presidential candidates of the Coalition and *Vamos*. The FMLN candidature launched its own anti-corruption plan one day earlier, but this was hardly noticed by the media. At the time of the signing of the agreement, the FMLN candidates were both participating in a forum on citizens' security co-organised by the EU. Critics stated that FMLN's absence at the high-level anti-corruption event might have been related to a clause in the agreement about extradition of citizens accused of corruption, as the party might not yet have had enough distance from ex-President Funes' corruption scandal to publicly show their outrage.

Traditional antagonists FMLN and ARENA were observed to engage in more friendly competition than hitherto, while publicly showing confidence in the TSE. Bukele's campaign centred around corruption scandals involving two recent presidents (ARENA's Antonio Saca, currently jailed for embezzling 300 million USD in public funds, and FMLN's Mauricio Funes, who is under investigation while exiled in Nicaragua) and the poor economic and security environment, which appealed to ordinary citizens who felt that their concerns were disregarded by the established political elite. Capitalising on anti-establishment sentiments did not only appeal to young voters aged 18 to 39, who constitute the majority (51%) of the electorate, but also to older voters who had experienced that life under either ARENA or FMLN over the past 30 years had not been so different.

Fatigue with established parties also became visible in the support Bukele enjoyed from mayors representing parties within the Coalition; all four PDC mayors and several PCN mayors called upon their followers to vote for Bukele instead of their own candidate, Calleja.

Compared to previous elections, there was little policy content presented in the campaign, and recurrent political platforms from previous elections were hardly visible. There was little reference to what were the main campaign issues just one year previous in the legislative and municipal elections, namely security policies, the political influence of criminal gangs, migration and the revocation of Temporary Protection Status (TPS) for around 200,000 Salvadorans living in the USA.

The impact of criminal gangs on the electoral process was difficult to gauge: about two thirds of the country's voting centres were in gang-controlled territory. In all recent electoral processes, parties exchanged mutual accusations that the other made agreements with gangs for electoral purposes. There is proof that both FMLN and ARENA made payments to gangs in the previous presidential elections. For the 2019 polls, interlocutors reported a suspicious silence on the subject and speculated that parties might have been negotiating with the gangs. According to observers, FMLN seemed to face more problems than ARENA to access areas under gang control, as criminal elements held FMLN responsible for the introduction of extraordinary security measures in state penitentiaries, where many serving gang members are denied privileges.

The Electoral Law is explicit in that no public functionary or public servant may make use of their office for party politics. EU observers reported that mayors frequently used town halls and municipal facilities for storing campaign materials and that public servants were seen to engage in campaign activities during work hours. This was more frequently observed in the case of ARENA mayors. ARENA currently holds 140 out of the 262 mayorships, corresponding to municipalities in which two-thirds of the national population resides.

Similar to past electoral processes, political parties were observed to hand out household supplies and basic food staples during campaigning. This practice went totally unsanctioned, although the Penal Code schedules four to six year's imprisonment for whoever pays in cash or in kind or offers benefits to voters to cast their vote in favour of a given candidate or party. Likewise, observers reported that some parties and mayors appealed to voters by paying the 10 USD fee for renewal of expired national identity cards (DUIs).

## B. Campaign Finance

Campaigning costs are covered by both private and public funding. The Electoral Law establishes that political parties receive public financing (*deuda política*) based on the vote share the party received in the previous presidential elections. As a new party, *Vamos* was entitled to 50,000 USD as an advance payment. In the 2019 presidential polls, each vote had a value of 5.27 USD, therefore the Ministry of Finance will issue a total of 14.2 million USD for the 2.7 million votes the three parties and the coalition received: GANA will get 7.6 million, the coalition consisting of ARENA, PCN, PDC and DS will receive 4.5 million, FMLN 2 million, and *Vamos* 0.1 million.

Parties could request an advance of up to 70% of their public financing entitlement. As such, ahead of the elections ARENA received 3.9 million USD, FMLN 4.7 million, and GANA 365,000. As FMLN eventually obtained about one million votes less than in the 2014 presidential elections, the party will have to return 2.7 million USD to the Ministry of Finance.

According to *Acción Ciudadana* media monitoring, parties spent a collective 25.8 million USD on paid media advertising during the four-month campaign period. GANA spent 9.5 million USD, ARENA 8.4 million, and FMLN 7.7 million.

Apart from public funding, candidates and political parties could receive unlimited private funding in cash or in kind, with certain legal limitations. Accepting funding from entirely or partly state-owned enterprises, public entities, religious institutions, trade unions, and from persons sentenced for money-laundering or organised crime is expressly forbidden and may be punishable with a fine of up to 16,000 USD. It is doubtful that such a small fine is a deterrent in case of major illegal donations.

The origin of private campaign funds, in difference to the 2018 legislative and municipal elections, was not a subject of public debate. While there is a legal obligation to reveal funding sources, the TSE lacks the capability to undertake a timely verification of the same. The mandatory auditing of party finances in 2016 was not undertaken by the electoral authority until November 2018.

*The EU EOM recommends improving the TSE's capacity to fulfil its obligations to audit political financing, including internet advertising, and adopt adequate and proportional sanctions for non-compliance.*

### C. Voter Education

The TSE launched a nationwide voter education programme on radio and television to inform voters about their polling locations and voting procedures. On 10 January, and with technical assistance from the International Republican Institute (IRI), the TSE launched its *Votabús* project consisting in a bus travelling the country to provide information on the elections.

### X. National and International Election Observation

**The strong presence of national and international observers contributed to an adequate scrutiny of the elections.**

The Electoral Code does not provide for citizen or international observers; observation is only regulated by a 2015 TSE instruction that imposes complex accreditation procedures and the signature of a memorandum for national organisations wishing to deploy more than 200 observers. The memorandum, aimed at preventing overcrowding in polling centres, may constitute a restriction of citizen observers' right to observe on equal terms as international observers. This did not prevent national groups from deploying a total of 3,221 accredited observers.

Most citizen observation was conducted under umbrella organisations such as Fundaungo (1,222), comprising private foundations, as well as private and public universities; FUNDASPAD (637), FUSADES (281), and *Consortio Observador Electoral* (850). The latter, made up of the University of El Salvador (UES), the El Salvador Association of Private Universities (AUPRIDES), and Social Initiative for Democracy (ISD) unsuccessfully sought authorisation from the TSE to conduct a parallel vote tabulation. The Ombudsperson for Human Rights also deployed 750 observers to monitor elections.

The TSE accredited a total of 1,103 international observers, including from the European Union (82), the Organization of American States (84), as well as the National Democratic Institute (NDI) and the International Republican Institute (IRI). Other international institutions accredited by the TSE were the Inter-American Union of Electoral Bodies (29), embassies of American and European countries in El Salvador (89), as well as guests of contending political parties ARENA and FMLN (220).

### XI. Media and Elections

**Freedom of expression is generally respected, but smear campaigning was present on Internet, social media, and traditional media. Electoral coverage was mostly biased and the campaign silence period was violated by most of the candidates through TV interviews and press conferences broadcast live on election day.**

#### A. Media Environment

The media landscape in El Salvador is vast and polarised. A few private media groups with clear political and economic interests dominate most of the media offer in the country. State media openly support the government. The combination of these factors limits citizen access to independent media and impartial information.

Freedom of expression is respected, and journalists are generally able to report freely. However, media practitioners are still victims of eventual threats and common violence, precarious working conditions, and self-censorship. Discrimination, verbal violence, and sexual harassment of female journalists are common.

Television and radio are the main sources of information in El Salvador. State media include *Televisión de El Salvador* (TVES) and *Radio Nacional de El Salvador* (RNES). State media have been the traditional mouthpiece of the government and an instrument for promotion of governmental projects. On the private side, 40 TV channels (12 with national coverage), more than 300 radio stations (including 20 community radio stations), and six daily newspapers are currently available in the country. There are also hundreds of online media, and more than 3 million citizens regularly use social media.

The *Asociación Salvadoreña de Radiodifusores* (ASDER) is the largest radio and TV association in the country, including a total of 125 private radio stations and 11 private TV channels. The 20 community radio stations operating in El Salvador are assembled under the *Asociación de Radiodifusión Participativa de El Salvador* (ARPAS). A total of 18 community radio stations still broadcast under one single frequency, despite a 2016 amendment of the Telecommunications Law that for the first time recognised community radio stations and eliminated the public bid as only instrument to allocate radio and TV frequencies.

*The EU EOM recommends minimising concentration of media by allocating specific licences and radio frequencies to community radio stations.*

Digital and social media play a very important role in the Salvadoran media landscape. According to the General Direction of Statistics and Census (DIGESTYC), around 30% of the population has access to Internet, and 93% of citizens have a mobile phone.

#### B. Legal Framework for the Media

The Constitution of El Salvador guarantees freedom of expression, freedom of the press, and establishes the right to response. In addition, the Constitution prohibits censorship, expropriation of media, and seizure of print houses.

Other laws regulating the media sector are the Law on Access to Information (2011), the Law on the Right of Rectification or Response (2013), and the Telecommunications Law (2016). The National Bureau of Electricity and Telecommunications (SIGET) is the only media regulatory body in the country, responsible for allocating and revoking broadcasting licenses.

Media coverage of elections is regulated by the Electoral Law and the Political Parties Law. However, neither of these laws includes provisions on impartiality and objectivity by the media when covering electoral processes, nor is there a provision for equitable access for political parties and candidates to the media.

*The EU EOM recommends strengthening the legal framework by regulating journalism and media, including provisions on equitable access for parties and candidates to the media and media objectivity and impartiality in coverage of electoral processes.*

The Electoral Law prohibits publication of surveys 15 days before elections and dissemination of governmental publicity 30 days before the polls. Articles 60 and 61 of the Political Parties Law establish the allocation of free airtime programmes (*franja electoral*) to all electoral contestants in the state media during the last five days of the campaign period. According to article 61, the programmes should last 30 minutes each day and should be aired

on TVES and RNES between 19:00 and 22:00 hours under the following modality: 15 minutes equally divided amongst electoral contestants, and 15 minutes proportionally distributed according to parliamentary representation.

In a late decision, the TSE published the distribution of free airtime allocated to each electoral contestant on the same day that its broadcasting was to begin (24 January 2019). The distribution of airtime was as follows:

FREE AIRTIME 2019							
POLITICAL PARTY	EQUITABLE TIME		SEATS / PARTY	Percent age	PROPORTIONAL TIME		
FMLN	3'45"	225"	ARENA 37	42.04	378.3 6	378 "	6'18"
GANA	3'45"	225"	FMLN 23	26.14	235.2 6	235 "	3'55"
VAMOS	3'45"	225"	GANA 10	11.36	102.2 4	102 "	1'42"
COALITION ARENA-PCN-PDC-DS	3'45"	225"	PCN 9	10.23	92.07	92"	1'32"
			PDC 3	3.41	30.69	31"	0'31"
			DS (3)	3.41	30.69	31"	0'31"
			VAMOS (3)	3.41	30.69	31"	0'31"
<b>TOTAL</b>	15'00"	900"	82 (88)	100	900	900 "	15'00"

### C. Media Monitoring Findings and Campaign in the Media

Freedom of expression and freedom of the media were generally respected during the EU EOM media monitoring period.<sup>23</sup> Traditional outlets provided information regularly to citizens on the development of campaign activities and the electoral process. However, balanced and impartial reporting was rare due to the polarisation of the media. On Internet, a large number of websites with the appearance of digital media disseminated fake news and carried out smear campaigning.

*The EU EOM recommends strengthening fact-checking collective knowledge and monitoring capacity of disinformation in order to minimise dissemination of fake news and smear campaigning.*

Newspapers, TV channels, and radio stations offered election-related news and programmes, including interviews and debates with candidates. Most of these initiatives, however, lacked information on the GANA candidate, as Nayib Bukele avoided media interviews and participation in public debates. Most media hardly covered his campaign events.

Media electoral coverage<sup>24</sup> was mostly biased. Findings from EU EOM media monitoring reflect that state media TVES and RNES openly favoured Hugo Martínez and the ruling party

<sup>23</sup> From 3 January to 3 February, the EU EOM monitored a total of 10 media with national coverage, including TVES, RNES, Canal 6, Canal 19, Canal 29 Gentevé, Radio Maya Visión, Radio YSKL, *La Prensa Gráfica*, *El Diario de Hoy* and *Diario Co Latino*. TV broadcasts were monitored from 18:00 to 02:00. Radio broadcasts were monitored from 06:00 to 12:00.

<sup>24</sup> Electoral coverage included all election-related news, programmes, and articles. Electoral advertising, editorials, and opinion articles were not considered for this section of the monitoring.

by allocating 53.4% and 56.4%, respectively, of their news and election-related programmes to FMLN, against an average of 18.5%, 18.9%, and 7.6% to the ARENA-led coalition, GANA and *Vamos*. Moreover, FMLN benefited from extensive additional coverage in state media through news on governmental works and projects.

*The EU EOM recommends disengaging state media from direct government control and convert state media into genuine public service broadcasters with editorial independence.*

On the private side, media like Canal 6, Canal 19 or Radio YSKL made a more equitable distribution of airtime among contestants, but showed imbalances in the tone of their coverage, mainly favouring ARENA and FMLN and discrediting GANA. Other media, like Gentevé Canal 29 and Radio Maya Visión clearly favoured Hugo Martínez by allocating 76.3% and 85.2%, respectively, of their total election-related airtime to FMLN.

In print media, *La Prensa Gráfica* and *El Diario de Hoy* favoured Carlos Calleja by allocating him 43.4% and 47.4%, respectively, of their election-related news, while *Diario Co Latino* favoured Hugo Martínez by allocating him 64.9% of the electoral coverage.

During the monitoring period, Nayib Bukele was the candidate receiving the largest amount of negative reporting on RNES (61.9% of the total airtime allocated to the candidate), TVES (37.9%), Canal 6 (46.1%), Canal 19 (19.7%), Radio YSKL (35%), and *Diario Co Latino* (69.6% of the total space allocated to the candidate). (See full EU EOM Media Monitoring Results in Annex A).

Media monitoring revealed that the coverage devoted to women on radio & TV and newspapers represented only 7.6% and 6.3%, respectively, of all news and election-related programmes. The tone of the newspaper coverage devoted to women was always neutral, while on radio and TV the tone was either neutral or positive. A 2018 PDDH report on the work environment for women journalists showed that 90.3% of women identified discriminatory practices in the Salvadoran media, and 76.9% assured they were less involved in decision-making than their male colleagues.

State media TVES and RNES afforded free airtime programmes to the different electoral contestants during the last five days of the campaign. Due to the late publication by the TSE of the final distribution of the stipulated airtime, only two political parties (FMLN and ARENA) managed to benefit from free airtime programmes on the first day of transmission. GANA did not make use of the free airtime on any of the five days established by the law.

Smear campaigning was present on Internet, social media, and traditional media. Some materials disseminated on internet questioned the moral integrity or private life of particular candidates. Notwithstanding, only one official complaint in relation to smear campaigning was lodged. A high level of fake news disseminated on Internet was also observed.

Electoral propaganda and political advertising were broadly disseminated by the media during the four-month campaign period. According to reports published by local NGO *Acción Ciudadana*, in the period October-January 2018 candidates spent a total of 19.2 million USD. Nayib Bukele was the candidate registering the highest investment in paid advertising in the media and on street billboards with more than 7 million USD spent in the metropolitan area of San Salvador, followed by Carlos Calleja (6.5 million USD), Hugo Martínez (5.4 million USD) and Josué Alvarado (138,800 USD). Political parties and candidates also benefited from free-of-charge advertising and commercial bonuses offered by different TV channels and radio stations.

Six days before the end of the campaign period, the TSE suspended the broadcasting of eight TV spots for violation of articles 172 and 179 of the Electoral Law, and article 70 of the Political Parties Law. The referred articles prohibit the use by political parties of national symbols, logos/flags of other political parties, or images of other candidates on their electoral campaign materials. The suspended spots were paid for by ARENA (four), GANA (three) and FMLN (one).

The campaign silence period, regulated by article 175 of the Electoral Law, was violated by most of the candidates and several party representatives through TV interviews and press conferences broadcast live on election day. However, in an arbitrary decision, the TSE only opened a sanctioning procedure against Nayib Bukele, who conducted a press conference, broadcast live by several media, in which the GANA candidate called on citizens to vote for him just two hours before closing of polls. The TSE also called the media to stop broadcasting the recording of Bukele's press conference.

Similarly, some news and opinion articles published on election day by *La Prensa Gráfica* and *El Diario de Hoy*, with a clear intention to influence voters, were not subject to any TSE action. On Internet and social media, numerous proselytising messages by all four candidates circulated during the three days prior to elections and on the election day. At the time of writing, no responses to these actions were yet taken by the electoral administration.

#### D. TSE and the Media

The TSE accredited a total of 3,474 journalists (3,323 national and 151 international) representing 230 different media (173 national and 57 international) to cover the 2019 presidential elections. In addition, the TSE declared having spent 731,780 USD conducting its voter education campaign in the media (including radio, TV, newspapers, social media, digital media, billboards, and buses).

## XII. Political Participation of Women

### **Women continue to face gender-based violence and obstacles to the full enjoyment of political participation.**

The situation of women in El Salvador remains largely unchanged since the publication of the 2018 EU EOM final report. Women comprise 53.3% of registered voters, yet continue to be underrepresented in the majority of elected positions, in government, and in decision-making positions.<sup>25</sup> El Salvador is committed to achieve parity between men and women.<sup>26</sup> The slow rise in women's representation in politics is the consequence of a male-dominated public space and persistent traditional values in society. Human rights organisations report extremely high levels of femicide and gender violence, including in the political-electoral sphere, and shocking violations of sexual reproductive rights with disproportionate imprisonment penalties in cases of clear medical emergencies.<sup>27</sup> None of the four competing parties championed a female candidate for the presidency.

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<sup>25</sup> The current Legislative Assembly fulfilled the mandatory 30% quota with 26 women elected in 2018, one less when compared to the previous legislature. As for local government, only 11% of women were elected mayors.

<sup>26</sup> The Latin American and the Caribbean Parliament (PARLATINO) approved the legal framework to advance parity democracy in the region during its 2015 General Assembly. It is a reference tool for national parliaments in the implementation of institutional reforms and policies to promote and ensure substantive equality between women and men in all decision-making spheres across the region.

<sup>27</sup> European External Action Service Resolution on El Salvador on the cases of women charged for having spontaneous abortion (2017/3003(RSP)), 14.12.2017.

Both female candidates conducted visible campaign activities and participated in the 9 January debate. Carmen Aída Lazo, the coalition's vice-presidential candidate, created the slogan *#electawomantothepresidentialhouse*. Lazo highlighted the lack of economic opportunities for women, the importance of women's participation in decision-making positions, and the fundamental role of education to enhance social conditions. Her campaign spots promoted a strong, courageous, and professional woman. FMLN's vice-presidential candidate, Karina Sosa, promoted the need for equal pay for women and men.

Verbal aggression with sexist remarks, especially on social media, against female candidates was recurrent and widespread throughout the campaign period. The GANA presidential candidate is currently under investigation by the Attorney General's Office for verbal attacks against a female member of the municipal council during his tenure as Mayor of San Salvador. Despite public acknowledgement of verbal slurs against the vice-presidential candidates, the Electoral Prosecutor's Office did not receive any official complaints.

A Pact for the Guarantee of the Rights of Salvadoran Women in the 2019 Election, signed by all parties, called on contenders to use inclusive and non-sexist language and to avoid any type of aggression against women during the campaign. The Pact had the backing of the TSE, the Women's Parliamentarian Group, the NGO ISDEMU (Salvadoran Institute for the Development of Women) and the Attorney General. The Pact did not include sanctions for its violation.

In the electoral administration, only three of the nine serving TSE magistrates were women, while in the temporary electoral bodies only 25% of departmental electoral board (JED) members and 30% of municipal electoral board (JEM) members were women. At the lowest level of election administration, women comprised 54% of poll worker trainees.

*The EU EOM recommends promoting effective measures for women to reach representation parity in all elected positions by, for example, introducing quotas to reach representation parity in political party structures and in higher bodies of the electoral administration (e.g. Supreme Electoral Court, Departmental Electoral Boards, Municipal Electoral Boards).*

### XIII. Political Participation of Persons with Disabilities

#### **The TSE implemented practical measures to improve conditions for participation of persons with disabilities.**

El Salvador is signatory to the relevant international and regional instruments on the protection of the political rights of persons with disabilities, including the Convention on the Rights of Persons with Disabilities (CRPD) and the 1999 Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. According to a 2015 National Survey,<sup>28</sup> 343,000 Salvadoran adults (410,000 including minors) bear a physical, sensorial or intellectual disability. The National Register of Natural Persons records 270,000 Salvadorans with a disability.

El Salvador has several organisations aiming to facilitate improved conditions for persons with disabilities, including the full exercise of their political rights. Most organisations are also part of the National Council for Persons with Disabilities (CONAIPD), a public institution that coordinates all policies related to the inclusion of persons with disabilities. As in previous elections, the TSE signed a cooperation agreement with CONAIPD, outlining measures to enhance the participation of persons with disabilities. With UNDP support, CONAIPD developed materials and organised training for TSE staff on facilitating the vote

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<sup>28</sup> <http://www.conaipd.gob.sv/wp-content/uploads/2017/09/Encuesta-CONAIPD-primera-entrega.pdf>

of special needs voters. The polling station staff manual included a chapter dedicated to how poll workers could facilitate the vote of persons with disabilities. There is no legal prohibition for persons with disabilities to become poll workers, but in practice they do not receive additional support to participate. This contravenes the CRPD that prescribes non-discrimination and reasonable accommodation.<sup>29</sup>

Physical access for the mobility impaired to all public buildings, including the schools that were used as voting centres, is guaranteed by the state.<sup>30</sup> In practice, the TSE ensured punctual installation of provisional wooden ramps. Blind and visually impaired voters were provided with a wide set of options, including the use of special Braille envelopes, the assistance of a person of their choice and the possibility to declare their vote aloud to polling staff (although this contravened the secrecy of the vote). In line with international good practice, the Braille envelope was the only option which permitted voting without another person's assistance.

Civil society and institutional interlocutors reported that the Law on Equal Opportunities was no longer sufficient, and that approval of a new Law of Inclusion was necessary. A draft Law of Inclusion has been sitting in the National Assembly since 2016. It has the support of the Human Rights Ombudsperson's Office and CONAIPD. The law would provide much needed autonomy and power to CONAIPD and would better guarantee employment for persons with disabilities in state institutions.

#### XIV. Political Participation of the LGBTI Community

##### **The TSE made significant efforts to protect the political rights of the LGBTI community.**

The TSE took special care to protect the political rights of the LGBTI community. Fourteen LGBTI facilitators, including six transgender persons, provided training on inclusivity to poll workers. In order to ensure respect for political rights of transsexual and transgender electors, who had often been denied the right to vote in the past, poll workers were specifically instructed to accept their identification even when the picture on the DUI or on the voter's list did not correspond to their physical appearance or chosen gender identity. The poll workers manual included a specific section on the matter. The EU EOM received no reports of transsexual or transgender voters being denied to vote.

While there have been advancements in protecting the passive and active voting rights of the LGBTI community, there remain discrepancies between the name and the gender recorded on the DUI and the physical appearance and chosen gender identity of transsexual and transgender persons. Salvadoran legislation does not allow name changes based on the acquired gender, as such transgender individuals must identify themselves at polling stations with their original names and not with their chosen ones.<sup>31</sup> A draft bill on Gender Identity was introduced by the FMLN before the National Assembly on 22 March 2018, but it has yet to be discussed. Approval of a comprehensive Law on Gender Identity is required to guarantee the political rights and protect the dignity of all transgender and transsexual

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<sup>29</sup> CRPD, Articles 2 and 5

<sup>30</sup> Norma Técnica Salvadoreña NTS 11.69.01:14 Accesibilidad al medio físico. Urbanismo y Arquitectura. Requisitos.

<sup>31</sup> The Constitutional Chamber received in 2016 a constitutionality claim against articles 2, 3 and 36 of the Constitution and articles 11 and 36 of the Law on Name (*Ley del Nombre Natural*) on grounds that they discriminate the right of the person to bear a name that corresponds to his/her gender identity. The Chamber admitted the claim, although no decision has been issued yet.

citizens. Such a law would be in line with the 2017 consultative opinion of the Inter-American Court on Human Rights.<sup>32</sup>

*The EU EOM recommends ensuring transgender and transsexual people's dignity and full exercise of their active and passive voting rights by allowing them to legally change their name according to their chosen gender.*

The executive and the legislative powers took positive steps in recent years to protect the LGBTI community. In 2010, the government established the National Directorate for sexual diversity within the Secretariat of Social Inclusion and approved Executive Decree 56, which prohibited all discrimination based on sexual orientation and gender identity. In 2015, the National Assembly modified Articles 129 and 155 of the Penal Code to explicitly include hate crimes against LGBTI persons.

Notwithstanding, exclusion and intolerance towards the LGBTI community prevail in El Salvador, and members of the LGBTI community are still disproportionately victims of hate crimes and homicides. The Salvadoran LGBTI Federation reported that 34 members of the community were killed in 2017, although not all these killings were categorised as homophobic crimes.

## XV. Political Participation of Indigenous Citizens

**While a 2014 amendment to the constitution gave recognition to indigenous peoples, the national legislation does not provide specific measures to increase their political participation.**

Despite the presence of indigenous voters in six of the country's 14 departments, and the fact they account for ten percent of the overall population,<sup>33</sup> political parties were not observed to pursue specific strategies to obtain their vote. The national legislation does not provide specific measures to increase the political participation of indigenous people, and no indigenous candidate ran for any of the competing political parties. No quota or affirmative action measures are foreseen by law. Contrary to the 2009 and 2012 elections, there was no indigenous observation of the last four elections (2014, 2015, 2018, 2019).

However, and for the second time in Salvadoran history,<sup>34</sup> indigenous demands featured in the government plans of two of the running parties: Bukele's *Plan Cuscatlán* foresaw creation of a National Institute for Salvadoran Multicultural Investigation (*Instituto Nacional de Investigación Multicultural Salvadoreño*), dedicated not only to studies of the country's indigenous peoples, but also of afro-descendants; FMLN proposed creation of a National Indigenous Congress to convene representatives of the country's indigenous peoples and foster their political participation.

While El Salvador has not ratified the International Labour Organization's Convention 169, the constitution was amended in 2014 to give recognition to indigenous peoples: "*El Salvador recognises the indigenous peoples and shall adopt policies to preserve and develop their ethnic and cultural identity, world view, values and spirituality.*"

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<sup>32</sup> "Recognition by the state of one's gender identity is vitally important in guaranteeing trans peoples' full enjoyment of their human rights, including protection against violence, torture and ill-treatment; the right to health, education, employment, shelter, and access to social security; as well as the right to freedom of expression and association."

<sup>33</sup> According to the Report on Civil and Political Rights of the Republic of El Salvador presented to the UN Human Rights Committee in 2002: CCPR/C/SLV/2002/3, p. 173.

<sup>34</sup> In the 2014 presidential elections, FMLN consulted several indigenous communities and introduced four of the numerous indigenous demands into its plan for government.

## XVI. Electoral Justice

**There were few formal disputes, but the TSE's limited capacity to investigate infractions and non-dissuasive sanctions persisted throughout the electoral process. Three presidential candidates had petitions for their de-registration lodged with the Constitutional Chamber, two of these were still pending after election day.**

### A. Electoral Justice

The TSE is the highest electoral authority and commands simultaneously administrative and jurisdictional competencies. The TSE jurisdictional function guarantees the electoral rights of citizens, solves conflicts among political parties, investigates and sanctions electoral infractions, and decides on election appeals. The TSE may initiate investigations into violations of the Election Law on its own initiative or based on official complaints. The TSE is mandated to adjudicate election petitions for the nullification of elections and final results within expeditious timeframes<sup>35</sup> and decides in such cases by qualified majority vote of its magistrates.

Inadequate sanctions are detrimental to the effective enforcement of electoral laws. Sanctions are not dissuasive (e.g., low fines for the violation of the propaganda law and for the violation of campaign silence by the media) and also not proportional (e.g., a two-year imprisonment for the destruction of a ballot paper). The administration of electoral justice by the TSE requires clear rules of procedure to enhance legal security and guarantee timely decisions for a more effective electoral justice. This overlap originated legal uncertainty. A draft law on constitutional procedure is currently under discussion.

The TSE is the only appellate instance to review its own decisions. A final instance of review, but limited to cases of violation of constitutional rights, is offered by the Constitutional Chamber of the Supreme Court of Justice. The CC is not limited by legal deadlines when revising appeals in electoral matters. According to international principles, electoral justice must be expeditious to prove effective. This lack of deadlines introduces uncertainty regarding the CC criteria to prioritise the adjudication of some cases over others. In 2019, two appeals against running presidential candidates remained pending at the CC until after elections.

The political nature of the appointment of TSE Magistrates has led to the increase of public mistrust regarding its independence in the implementation of electoral justice. In addition, the lack of a second instance of appeal against TSE decisions diminished the right to an effective legal remedy.

*The EU EOM recommends introducing clear timeframes, deadlines and procedures to implement an efficient electoral justice including, for example, administrative mechanisms to process claims and appeals in a timely manner to lend legal certainty regarding candidacies.*

### B. Overview of Electoral Disputes

There were only a small number of electoral disputes. Affected parties had the opportunity to file complaints regarding the electoral process, to appeal TSE decisions on candidate nomination, and to file petitions on electoral administrative infractions. Electoral

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<sup>35</sup> Petitioners must present a case within 24 and up to 72 hours depending on the legal recourse offered in the Election Law. The TSE adjudicates within six days in case of a petition for the annulment of final results. Arguments are heard by the defendant, the Attorney General, and the Electoral Prosecutor.

administrative infractions generally remained unsanctioned due to the TSE's lack of capacity to verify and conduct significant and timely investigations.

The TSE registered 34 electoral disputes, the majority initiated by the TSE *ex officio* and in relation to violations of campaign rules. The TSE finalised the administrative procedure and applied sanctions in four cases.

The TSE acted in a case against GANA for negative campaigning, as it used the image of three former presidents, which is prohibited by law. In another case, ARENA allegedly used defamatory language against Bukele's party and person. The TSE issued interim measures in eight cases of violations of propaganda rules by the media during the electoral silence period. In addition, it ordered the removal of propaganda around one of the main voting centres in San Salvador. This last decision by the TSE was issued late, on 1 February 2019, when campaign silence was already in force.

Despite some initiatives demonstrated by the TSE to investigate and apply sanctions for the violation of election laws, several manifest and observable electoral infractions remained unsanctioned. Such was the case with the general practice of vote-buying, and of electoral infractions of propaganda rules, including in social media.

*The EU EOM recommends calibrating administrative and penal sanctions for electoral infractions and crimes in order to achieve a more effective electoral justice with sanctions that are dissuasive and proportional.*

#### C. Actions Taken by the Electoral Prosecutor's Office

The Electoral Prosecutor's Office (EP), a branch of the Attorney General's Office,<sup>36</sup> trained and deployed some 1,850 prosecutors for the elections, including 10 dedicated agents to supervise the out-of-country postal voting. The EP produced a new manual for the 2019 elections, based on experience of the 2018 polls. The manual detailed the legal actions prosecutors were required to take in the wake of both administrative and penal infractions and provided reporting templates to facilitate the registration of incidents. In past elections, the Electoral Prosecutor's actions concentrated mainly on the registration and investigation of penal electoral infractions, but in view of the presence of prosecutors in all voting centres, it was decided that prosecutors would include registration of administrative electoral infractions as well. The Electoral Prosecutor received no complaint alleging fraud.

The Electoral Prosecutor, received some 378 reports of alleged infractions on election day. In a preliminary analysis conducted by the Electoral Prosecutor some 98 could qualify as electoral crimes, 117 as electoral administrative infractions, 138 constituted simple observations for the TSE, and 25 were considered irrelevant. Three cases of electoral offenses were registered, two in Sonsonate and one in Santa Tecla, where voters destroyed a ballot paper. The Penal Code qualifies electoral offenses as fraud, and sanctions are disproportionately high when compared to the actual negative social impact of the fault.

#### D. Petitions to the Constitutional Chamber of the Supreme Court of Justice

The Constitutional Chamber of the Supreme Court of Justice acted as the court of appeal for the violation of constitutional rights. It received a total of four appeals and adjudicated two

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<sup>36</sup> The election of the Attorney General by the Legislative Assembly on 21 January generated criticism from the Social Initiative for Democracy (ISD) and *Vamos*. Each filed a petition with the CC requesting annulment of the decree of appointment. The demands denounce the lack of independence of the nominee due to alleged close connections to ARENA's presidential candidate and the lack of required justification of fulfilment of the legal criteria of the candidate. CC jurisprudence supports the arguments of the petitioners.

before the elections. Contrary to past experiences, the CC did not issue any ruling which impacted the electoral system or the administration of elections.

The four petitions filed with the CC requested the de-registration of presidential candidates Nayib Bukele, Josué Alvarado, and Carlos Calleja. Petitions against Josué Alvarado and Carlos Calleja were still pending after the polls, while the two cases against Nayib Bukele were dismissed by the CC on 18 December 2018.

The petitioner's request against Nayib Bukele was based on the candidate's alleged lack of political and ideological identity as he had links with several parties.<sup>37</sup> A CC ruling prohibits the TSE from registering candidates for municipal elections that changed party (*transfuguisimo*).<sup>38</sup> In a second case, Bukele's probity was questioned. In both cases, the CC rejected the petitions for defective argumentation.

The petitioner's request against Josué Alvarado for a provisional measure to suspend the candidate from campaigning was denied. Filed by a private citizen, the case argued the candidate violated the constitutional criteria of neutrality in matters of religion. The TSE registered Alvarado's candidature on 26 October 2018 and informed the CC of the documentation presented by the candidate. During the registration, the TSE verified candidacies within a short deadline of three days and consented to sworn declarations presented by candidates. The CC postponed its decision until after election day to avoid a decision that could impact on the election process.

A petition for de-registration of the ARENA presidential candidate, Carlos Calleja, was filed at the CC on 23 January 2019. According to a World Bank report, Calleja had links to his family business, the Calleja Group, which maintained contractual ties with the government. Holding a contract with the government would break one of the eligibility requirements for presidential candidates. Existing CC jurisprudence in a similar case decided against presidential candidate Antonio Saca in 2014. The CC considered that Saca's separation from the company with contractual ties to the government was done in a fraudulent manner. In addition, the CC decision clearly prohibited the TSE to register candidatures with the same or a similar deficiency.<sup>39</sup>

## XVII. Polling, Counting and Tabulation of Results

**Procedures for voting, counting, and transmission of results were well-implemented in a transparent process that offered sufficient guarantees. The tabulation of final results was orderly, and while TSE decisions were expeditious, some lacked clear criteria.**

The EU EOM's 82 observers visited 375 polling stations throughout the day in the country's 14 departments; opening was observed in 37 of these polling stations and closing and counting in 35. Voting procedures were observed in 301 polling stations in 148 out of El Salvador's 262 municipalities. Observers submitted 35 reports on the transmission of results from polling centres across the country. EU observers used randomisation procedures for the selection of observed polling stations in 85% of their observations.

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<sup>37</sup> According to the petitioner, Nayib Bukele was registered with FMLN and later expelled; founded the party *Nuevas Ideas*, registered with CD and, following CD's de-registration by the TSE, registered as a presidential candidate with GANA.

<sup>38</sup> Constitutional Chamber ruling nr. 39-2016, dated 1 March 2017, on the prohibition of crossing the floor (*transfuguisimo*) for municipal council members.

<sup>39</sup> Constitutional Chamber ruling nr.163-2013, dated 26 June 2014.

## A. Overview of Opening and Voting

Election day was calm and generally well-organised. EU observers assessed opening procedures as good or very good in 33 of the 37 observed polling stations and described the process as quiet, orderly and straightforward. EU observers reported that 21 of the 37 observed polling stations opened within the first 20 minutes of the official opening time of 07:00. In five of them, opening was delayed up to 90 minutes due to no-show of poll workers or late arrival of election materials. The TSE informed it had established all polling stations within two hours of the official opening time. On a positive note, all poll workers had been previously trained, and the TSE did not have to resort to appointing untrained polling staff.

70% of the observed JRVs were established with four members, the remaining 30% with three, the minimum prescribed by law. In almost all observed polling stations (95%), at least three of their members received training. In the observed polling stations, women made up 55.3% of the committees, with 12.6% of them with an all-female composition. Polling staff were observed to perform their duties with impartiality.

The presence of FMLN, Coalition, and GANA party agents in 93% of the observed polling stations contributed to the transparency of the process, although partisan activities both in and around polling centres was widely reported, a fact that contravened the electoral silence period and did not contribute to a neutral voting environment. Transportation of voters was detected in 52% of the observed polling stations (64% in rural areas), with vehicles being identified with ARENA in 86%; FMLN, 72% and GANA, 37% of the observations.

*The EU EOM recommends ensuring respect for the campaign silence period by enforcing existing legislation that prohibits all forms of canvassing and particularly the use of campaign material inside voting centres and statements by political leaders through media outlets.*

The EU EOM assessed the overall conduct of polling operations as good or very good in 99% of observed polling stations and described the process as calm and orderly. Polling procedures were adhered to, with only minor exceptions. In 29 observations, EU observers reported that the polling station committee turned away voters, mostly for reasons of expired or torn DUI. The layout in 92% of observed polling stations ensured the secrecy of the vote. Around 65% of observed polling stations were accessible for persons with disabilities. The EU EOM did not receive any report of transgender voters being turned away for mismatching ID photo or any other unlawful or discriminatory reason.

## B. Counting

EU EOM observers assessed the counting process as good or very good in all 35 of the observed polling stations. In 32 of them, EU observers described the process as transparent, well-organised and orderly and reported that poll workers performed professionally. Procedures were followed properly in the vast majority of the observed polling stations. The presence of party agents and their good performance ensured the transparency of the process. Party agents received a copy of the polling station results protocol and were able to verify these against official results at the national level. Copies were also provided to the Electoral Prosecutor. There were few complaints submitted on polling day.

## C. Transmission and Publication of Preliminary Results

For the first time, the TSE implemented an in-house electronic system for transmission and tabulation of preliminary results. Developed by TSE experts, the system used scanning equipment donated by the Association of World Election Bodies (A-WEB) for the 2018 polls.

The TSE made significant efforts to develop and adjust this in-house system up until one day prior to election day. Although development of the system started at a relatively late stage of the electoral cycle, the TSE achieved good results.

The TSE did not generate documentation encompassing all components of the transmission system and its internal processes. While this did not prevent the successful implementation of the system, good practice would entail that the TSE Information Service Unit (USI) elaborate a thorough process and product documentation. This would permit experts and future users an improved understanding of how to operate the transmission system properly, and assure preservation of technological institutional memory.

*The EU EOM recommends documenting (for example, through a manual of procedures) all processes and components of the system for transmission and tabulation of preliminary results to ensure quality control in data processing and allow system users and stakeholders to track information relating to the different stages and activities.*

To test both the transmission system and administrative and logistics arrangements, the TSE implemented a thorough 4-phased verification programme, including three national trials, as well as series of internal tests. These allowed the TSE IT experts to identify program errors and shortcomings in the network coverage, coordination, and logistics, and to adjust the system accordingly. Modifications to the system at a late stage prior to election day raised doubts about the proper functioning of the system. On a positive note, the transparency of the process was significantly enhanced by the presence of party agents during all tests who monitored data processing via a special monitoring module. Due to time constraints, the TSE did not proceed with all desired system modifications, and further adjustments were planned for the post-electoral period.

Following the counting at 9,568 polling stations on election day, protocols were scanned and transmitted to a National Election Results Processing Centre (CNPRES) located in San Salvador, where data entry clerks processed data through a double-blind entry system. Protocols were transmitted from the large majority of polling centres. Transmission failures were due to connectivity problems and equipment failure, and in only a few cases the transmission could not be performed due to human error. EU observers followed the scanning and transmission of results from the 14 departments and assessed the process as good or very good in 30 out of 31 observed polling centres. At the national level, the EU EOM followed the reception and digital entry and aggregation of results protocols.

The transmission and data processing progressed at a brisk pace, and by 23:00 on election day the TSE already received over 90% of all protocols, which allowed them to provide a reliable projection of results as planned. By 05:30 the following day, the TSE had processed 99.94% of all protocols. The six outstanding protocols were eventually processed during the final tabulation.

To ensure timely and broad dissemination of preliminary results, the TSE developed a designated website. Last moment modifications of the network traffic management system did not permit time for proper testing and adjustments, and the website subsequently failed. Using alternative means for dissemination, such as official TSE social media platforms as well as live media broadcasts from CNPRES, preliminary results were continuously communicated to the general public. Party agents had live uninterrupted access to detailed information, including results broken down by polling station and scanned copies of the original results protocols through the monitoring module on the TSE intranet. When the publication website stabilised the following day, it provided the public with a similar comprehensive set of data.

#### D. Tabulation of Final Results

The tabulation of final results, based on the 9,568 original polling station results protocols, was officially launched on 5 February and completed within two days. TSE staff compared preliminary results with original protocols, making adjustments to correct arithmetical errors or inconsistencies. Only 17 results protocols with inconsistencies were sent to the TSE magistrates for review. The TSE examined these in an open session with the presence of party agents, the Electoral Prosecutor, the Ombudsperson for Human Rights (PDDH), the Electoral Oversight Board (JVE), international observers, and the media. Inconsistencies were mostly the result of poll workers misallocating valid votes to the coalition rather than to a party within the coalition. TSE decisions were expeditious, but lacked clear criteria. In two instances, the Electoral Prosecutor shared copies of the results protocols with the TSE, which was fundamental for clarification of the inconsistency.

On the first day of tabulation, the TSE distributed the Manual for Tabulation of Final Results to the tabulation teams. The manual contained instructions on how to handle inconsistencies and the criteria to apply in order to resolve them. An earlier dissemination of the manual would have contributed to a better understanding of the process from the onset, especially by party agents and state institutions monitoring the tabulation. Compared to the 2018 polls, the TSE improved the tabulation layout by physically separating tabulation tables from each other and putting up a barrier between tables and observers. This offered a more orderly work environment and prevented party representatives from exerting pressure on tabulation officials, as was the case in past elections.

The EU EOM observed the tabulation with four observer teams who assessed the process as transparent and orderly during 26 observation periods. Contrary to previous elections, the PDDH was not granted full access to the tabulation on equal terms as the Electoral Prosecutor resulting in an official complaint to the TSE. Party agents and members of state institutions were always present during the tabulation exercise. EU observers noted that tabulation procedures were always or mostly followed in all 26 observation periods, and that decisions on the validation or correction of results protocols were taken by consensus.

### XVIII. Results and Post-Election Environment

**As a good transparency measure all final results, including images of original results protocols, were made available to stakeholders. GANA's victory was decisive, achieving the strongest result in all 14 departments. A few days after the elections, FMLN and ARENA members pressured for renewal of their parties.**

#### A. Publication of Results

The final results, broken down to individual levels of election administration units, were uploaded and published on the TSE final results website. The publication of preliminary results was accompanied by scanned images of original results protocols. This constituted an important element of transparency of the electoral process. There were no complaints lodged in relation to final results. (See full Election results in Annex B).

#### **Final Results**

<b>Political Party/Coalition</b>	<b>Valid Votes</b>	<b>Percentage of Votes</b>
<i>Gran Alianza para la Unidad Nacional</i> (GANA)	1,434,856	53.10%

Coalition in total	857,084	31.72%
<i>Alianza Republicana Nacionalista (ARENA)</i>	770,950	28.53%
<i>Partido de Concertación Nacional (PCN)</i>	22,065	0.82%
<i>Partido Demócrata Cristiano (PDC)</i>	8,219	0.30%
<i>Democracia Salvadoreña (DC)</i>	2,742	0.10%
<i>ARENA + PCN + PDC + DC</i>	53,108	1.97%
<i>Frente Farabundo Martí para la Liberación Nacional (FMLN)</i>	389,289	14.40%
<i>Vamos</i>	20,763	0.76%

## B. Political Overview of the Election Results

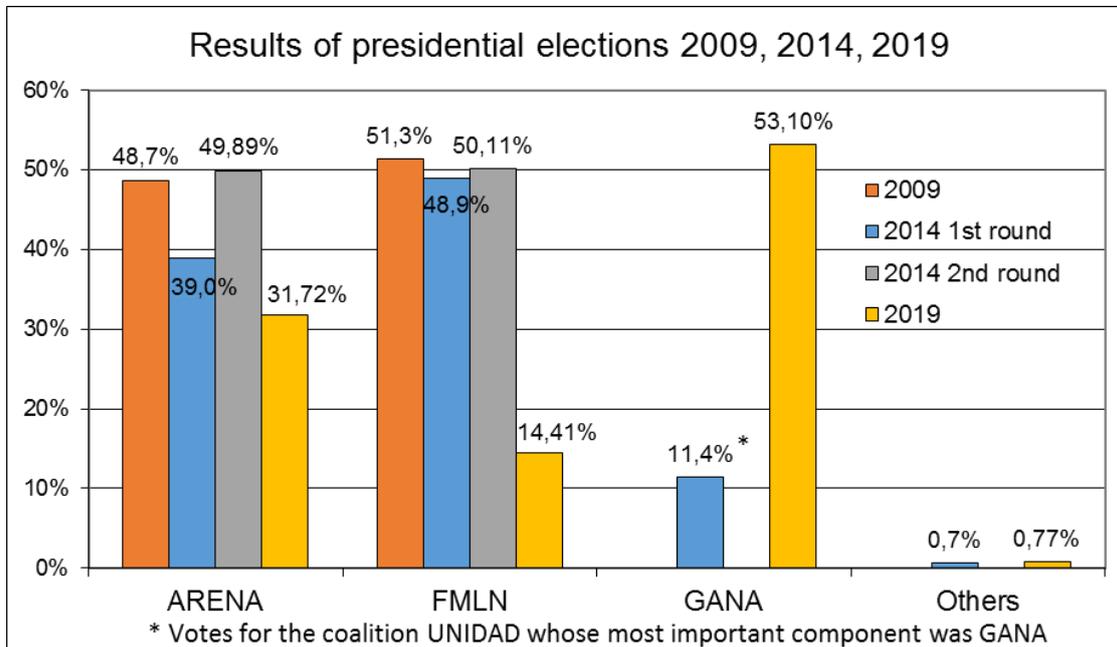
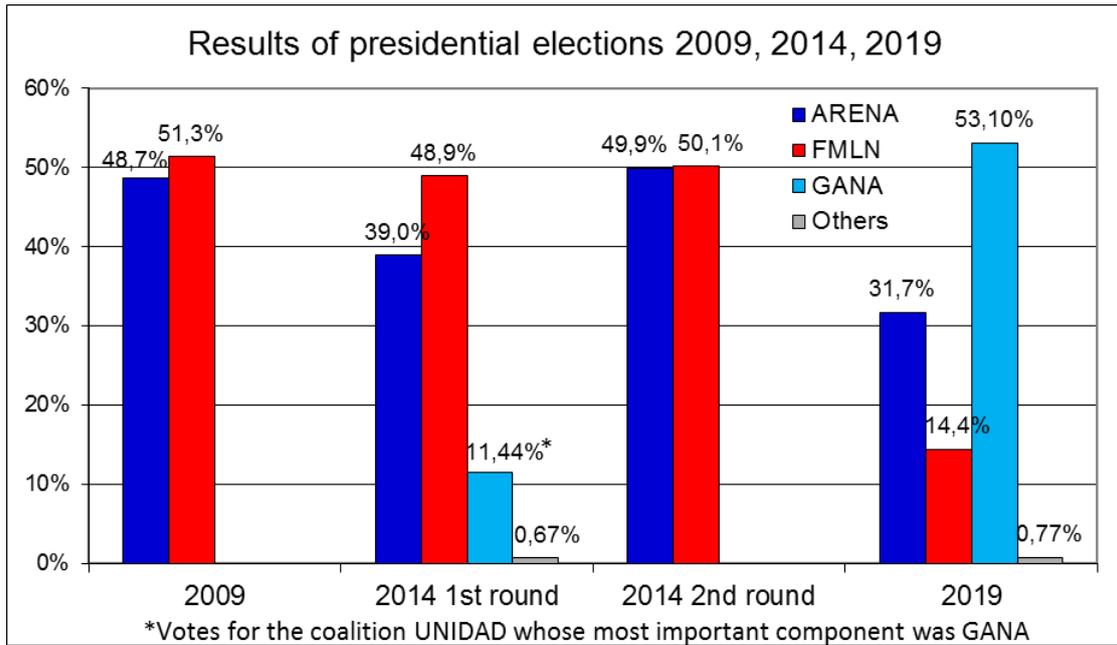
On 14 February, and after expiry of the three-day period for appeals, the Supreme Electoral Court confirmed the final results of the 2019 presidential elections. As the GANA candidate obtained an absolute majority, no run-off was required, and Nayib Bukele was declared president-elect of El Salvador.

Nayib Bukele and Félix Ulloa (GANa) won the elections with 1,434,856 votes (53.10%). Carlos Calleja and Carmen Aída Lazo (ARENA, PCN, PDC, DS coalition) were the second most voted with 857,084 votes (31.72%), including 770,950 for ARENA, 22,065 for PCN, 8,219 for PDC, 2,742 for DS, and the remaining votes were attributed directly to the coalition. Hugo Martínez and Karina Sosa (FMLN) obtained 389,289 votes (14.41%), and Josué Alvarado and Roberto Rivera (*Vamos*) 20,763 votes (0.77%). Invalid and challenged ballots amounted to 26,345 (0.96%) and 1,973 (0.07%), respectively.

The GANA ticket recorded a landslide victory. The party had previously only participated in presidential elections once in 2014 as part of the “*Unidad*” coalition, obtaining 300,000 votes (11.44%). In the 2018 legislative elections, the party obtained 240,000 votes (11.45%). In the 2019 elections, the party polled five or six times higher, obtaining 1,434,856 votes (53.10%).

The ARENA-led coalition’s result cannot be compared directly to ARENA’s 2014 results, as there was also then a second round in which ARENA stood alone against FMLN. Even so, that second round gave ARENA 1.5 million votes (50.1%), while in the 2019 polls this number dropped by 650,000 votes (37%). Notwithstanding this significant drop in support, FMLN was the party which suffered the greatest loss. FMLN obtained 1.1 million fewer votes in 2019, revealing the party lost almost 75% of its support base over the last five years.

	2009	2014 1st round	2014 2nd round	2019
ARENA	48,68%	38,96%	49,89%	31,72%
FMLN	51,32%	48,93%	50,11%	14,41%
GANa		11,44%		53,10%
Others		0,67%		0,77%



GANAs had the strongest result in all 14 departments of the country, and in 195 of the 262 municipalities. Decisive to this victory was the party's strong performance in heavy-weight Santa Ana and San Miguel Departments, but most of all in San Salvador Department, which accounts for 27% of the electorate and where GANA obtained almost 60% of the vote. The fact that two-thirds of the country's citizens currently live under ARENA municipal administration (and a handful under mayors from the remaining coalition parties) does not appear to have been decisive. In addition to some ARENA mayors, all four PDC mayors and several PCN mayors openly campaigned for Bukele.

The coalition polled highest in the outlying departments of Ahuachapán, Chalatenango, Cabañas, and Morazán. FMLN had its best results in its civil war bastions of Chalatenango,

Morazán, and Usulután, but also in Ahuachapán, where the party traditionally had not been strong.

The vote of the Salvadoran diaspora proved to be less significant than expected, as fewer than 4,000 cast a ballot in these elections. In the year prior to the 2019 polls, Bukele campaigned frequently in the USA and eventually obtained 86% of the out-of-country vote. More significant for Bukele is the fact that Salvadorans abroad provided financial support for his in-country campaign.

Turnout reached 51.9% of the 5,268,411 registered voters, almost 9% below the turnout in the 2014 second round. This is the second lowest turnout in any presidential elections since the Peace Accords, signaling a steady downward trend in participation since the 2004 presidential elections, when participation reached 68.4%.

A few days after the elections, voices from inside both traditional parties called for reforms. In the case of ARENA, it was especially young female politicians who requested a renewal of the party. ARENA President Interiano announced that the party would call for internal elections of its leadership (due in half a year) as soon as possible, and that the party's current leadership could not stand.

One day later the Political Commission of the FMLN announced a similar statement: Internal elections would be advanced from the end of 2020 to the first half of 2019, and the current leadership was requested not to contest for any position; this request applied to 14 out of the Commission's 20 members, among them all the historic leaders of the party. However, within the next few days a discussion ensued, mainly between vice-president Oscar Ortiz and presidential candidate Hugo Martínez, if this call was binding for current holders of office within the party leadership. The party's debility is aggravated by the fact that it has to return 2.7 million USD of *deuda política*, as it had requested the maximum advance possible based on its electoral results in the 2014 elections.

## XIX. Recommendations

(Priority recommendations in **bold**)

NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>LEGAL FRAMEWORK</b>					
1	Inadequate sanctions are detrimental to the effective enforcement of electoral laws. Sanctions are not dissuasive (e.g. low fines for the violation of the propaganda law and for the violation of campaign silence by the media) and also not proportional (e.g. two-year imprisonment for the destruction of a ballot paper). (Final Report, Electoral Justice, p. 25).	<b>Calibrate administrative and penal sanctions for electoral infractions and crimes in order to achieve a more effective electoral justice with sanctions that are dissuasive and proportional.</b>	Requires amendment to the Election Law and Penal Code.	Legislative Assembly	Rule of Law IADC Art. 2, “The effective exercise of representative democracy...” ICCPR, GC 25, para 11 "States must take effective measures..." ICCPR, GC 31, para 6 "...only take such measures as are proportionate..."
2	The administration of electoral justice by the TSE requires clear rules of procedure that enhance legal security and guarantee timely decisions for a more effective electoral justice. The official campaign for the presidential elections started while some candidacies were pending decisions from the TSE and Constitutional Chamber regarding appeals. This overlap originated legal uncertainty. (Final Report, Electoral Justice, p. 25, and Registration of Candidates, p. 12).	Introduce clear timeframes, deadlines and procedures to implement an efficient electoral justice including, for example, administrative mechanisms to process claims and appeals in a timely manner to lend legal certainty regarding candidacies.	Requires amendment to the Election Law or introduction of an Electoral Procedural Law.	Legislative Assembly and Supreme Electoral Court (TSE)	Rule of Law; Right to an effective remedy UDHR Art. 8, “Everyone has the right to an effective remedy...” ICCPR Art. 2(2), “... to adopt such laws or other measures as may be necessary to give effect to the rights...”
3	The TSE requested a legal opinion from the CC on the constitutionality of the threshold [for de-registering a political party], and only in 2018 did the CC	Set clear timeframes, deadlines and/or procedures to guarantee timely resolution of all electoral legal opinions and appeals by the Constitutional Chamber to give effects to	Adoption/amendment of CC decision-making rules or adoption of a law on constitutional procedure	Legislative Assembly	Rule of Law; Right to an effective remedy UDHR Art. 8, “Everyone has the right to an effective

NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
	<p>instruct the TSE to review its 2015 decision [on Democratic Change political party] (Final Report, Registration of Political Parties, p. 13).</p> <p>CC decisions on appeals against candidates registration were still pending after election day. (Final Report, Electoral Justice, p. 25).</p>	rights (including right to participate in public affairs and freedom of assembly) and ensure the right to an effective remedy.	(draft currently under discussion).		<p>remedy...”</p> <p>ICCPR Art. 2(2), “... to adopt such laws or other measures as may be necessary to give effect to the rights...”</p>
<b>RIGHT TO VOTE</b>					
4	<p>The Constitution and the Electoral Code restrict this right for persons who have been disenfranchised as a result of a conviction for felony, with or without prison sentence. According to the TSE, a total of 5,875 convicted citizens were removed from the voter register. This number does not include those already removed for the 2018 legislative elections and whose sentence was still in force for the 2019 presidential elections... The legislation also restricts the right to vote for persons of “notoriously flawed conduct”, introducing a subjective criterion for exclusion, and for those advocating for the re-election of the president. (Final Report, Section Voter Registration, p. 11).</p>	Remove limitations on the right to vote based on subjective grounds, such as notoriously flawed conduct, and limitations affecting freedom of expression, such as advocating for the re-election of the president. Consider enfranchisement of convicted citizens; deprivation on the right to vote should pursue a legitimate aim, be objective and reasonable.	Constitution (Art. 74, 75) Electoral Code (Art. 7)	Legislative Assembly	<p>Universal suffrage</p> <p>ICCPR Art. 25</p> <p>ICCPR GC 25, para. 4: The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.</p> <p>ICCPR GC 25, para. 10: “The right to vote at elections must be established by law and be subject only to reasonable restrictions, such as setting a minimum age limit.”</p> <p>ICCPR GC 21, para. 3: “Persons deprived from liberty may not be subjected to any (...) constraint other than that resulting from the deprivation of liberty. Persons deprived of their liberty enjoy all the rights set forth in the Covenant”</p> <p>ICCPR GC 25, para. 14: “States parties should indicate and</p>

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					<p>explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable.”</p> <p>ECHR Hirst vs UK no. 74025/01 (6 October 2005).</p>
5	<p>As no provision was made by the TSE to facilitate voting by voters being held in detention awaiting trial, they were effectively disenfranchised. (Final Report, Section Voter Registration, p. 10).</p>	<p>The TSE should ensure that all registered voters can effectively exercise their right to vote, including those being held in detention awaiting trial.</p>	<p>No change to legal framework required.</p>	<p>Supreme Electoral Court (TSE)</p>	<p>Freedom from discrimination; Right and opportunity to vote</p> <p>ICCPR GC 25. Para 14: “Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.”</p> <p>ICCPR GC 25, para. 11: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.”</p>
<b>POLLING, COUNTING AND TABULATION OF RESULTS</b>					
6	<p>EU observers reported that training on determining the validity of the ballot was unclear, and poll workers were given contradictory instructions from trainers. The TSE acknowledged the problem, explaining there was an interrupted line of command between the training unit and facilitators as a result of trainees answering to the parties that proposed them rather than to TSE facilitators. (Final Report, Section Election Administration, p. 10).</p>	<p><b>Establish clear provisions for determining the validity of the ballot, ensuring prevalence of the voter’s intention, and include comprehensive criteria of what constitutes a valid or invalid vote in order to avoid confusion and partisan interpretations.</b></p>	<p>Requires amendment to the Election Law. (Art. 205, 207)</p>	<p>Legislative Assembly and Supreme Electoral Court (TSE)</p>	<p>Right and opportunity to vote; Genuine elections that reflect the free expression of the will of voters.</p> <p>ICCPR GC 25, para. 20 “...to supervise the electoral process and to ensure that it is conducted fairly, impartially...”</p> <p>Council of Europe, Code of Good Practice on Electoral Matters, Explanatory Report,</p>

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					para. 49.
7	Partisan activities both in and around polling centres were widely reported, a fact that contravened the electoral silence period and did not contribute to a neutral voting environment. (Final Report, Section Polling Counting and Tabulation, p. 27).	Ensure respect for the campaign silence period by enforcing existing legislation that prohibits all forms of canvassing and particularly the use of campaign material inside voting centres and statements by political leaders through media outlets.	No change to legal framework required.	Supreme Electoral Court (TSE)	Rule of law ICCPR GC 25, pars. 11 “...intimidation or coercion of voters should be prohibited...” El Salvador Electoral Law (1993), arts. 175 and 246.
<b>ELECTORAL ADMINISTRATION</b>					
8	The structure and composition of El Salvador’s election administration stems from the 1992 Peace Accords and was meant to ensure checks and balances between the most voted parties. In these elections, this system offered confidence to represented parties and uncertainty to others. During the pre-election period, contending candidatures not included in the TSE tended to question its independence and ability to deliver credible elections. (Final Report, Section Election Administration, p. 8).	<b>In the context of a renewed political landscape, in order to safeguard TSE jurisdictional and administrative functions and foster confidence, initiate a debate involving the widest possible spectrum of stakeholders on a possible reform of TSE structure and/or composition.</b>	Electoral Code (Art. 64 and 266)	Legislative Assembly	Genuine elections that reflect the free expression of the will of voters  ICCPR Art. 2.3b, “any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”  ICCPR GC. 25, para. 20, “There should be access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. “
9	Following a Constitutional Chamber ruling in 2015, members of the temporary electoral bodies cannot have political affiliation, a decision that has encouraged	Continue to untie the TSE from partisan influence through the depoliticisation of its temporary structures and administrative units to ensure its neutrality and independence	Electoral Code (Art 91, 95 and 99)	Legislative Assembly	Genuine elections that reflect the free expression of the will of voters

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	their partial depoliticisation. The decision recognised the right of the political parties to propose them, in line with the provisions of the Electoral Code. In practical terms, although the TSE reviewed all proposals against lists of party members and found no affiliations, EU observers reported that JED, JEM and polling staff members kept ties with the proposing parties. (Final Report, Section Election Administration, p. 8).	from the political parties.			ICCPR Art. 25  ICCPR GC 25, pars. 20, “An independent electoral authority should be established...”
10	EU EOM observers reported that some JEDs and JEMs were poorly resourced and staffed and that communication with TSE central structures could have benefited from better coordination. (Final Report, Section Election Administration, p. 9).	Strengthen institutional capacities of the election management body by guaranteeing the necessary legal support and coherent and consistent communication between all levels of the TSE.	No change to legal framework is required.	Supreme Electoral Court (TSE)	Genuine elections that reflect the free expression of the will of voters  ICCPR GC 25, para. 20, “An independent electoral authority should be established...”
<b>VOTER REGISTRATION</b>					
11	Political contenders did not express concern about the quality of the voter register. Notwithstanding, issues identified by previous EU missions remain, such as the inclusion of a number of deceased voters. (Final Report, Section Voter Registration, p. 11).	Ensure a more accurate voter register by undertaking a comprehensive updating of the National Registry (RNPN), including easing existing requirements and procedures for citizens living abroad to update their residence status.	No change to legal framework required. Improved administrative planning required.	Government  National Registry of Natural Persons (RNPN)  Supreme Electoral Court (TSE)	Universal Suffrage  ICCPR GC 25, para. 11, “States must take effective measures to ensure that all persons entitled to vote...”  Council of Europe, Code of Good Practice on Electoral Matters, Explanatory Report, para. 7.
<b>CANDIDATE REGISTRATION</b>					
12	Plurality of representation could be improved with the introduction of independent candidates. (Final Report, Section Registration of Candidates, p.	<b>Allow independent candidates to run for presidential elections.</b>	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	Right and opportunity to participate in public affairs and hold office; State must take the necessary steps to give effect to

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	13).		(The introduction of Independent Presidential candidates requires a change to article 151 of the Constitution)		rights ICCPR GC 25, paras. 1, 3 and 17, "...recognises and protects the right of every citizen to take part in public affairs..." ICCPR Art. 25, "Every citizen shall have the right and opportunity..." ICCPR GC 25, para. 15, "Persons who are otherwise eligible to stand for election should not be excluded by (...) reason of political affiliation." ICCPR GC 25, para. 17, "The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties."
13	Declarations of honour required to register as candidates are not verified for authenticity and can thus be disputed after candidacies are approved. (Final Report, Section Registration of Candidates, p. 12).	Introduce mechanisms to allow the TSE to verify the authenticity of declarations within the legal registration period for candidates.	No change to legal framework required.	Supreme Electoral Court (TSE) and state institutions.	Rule of law; Right and opportunity to participate in public affairs and hold office ICCPR GC 25, para. 9, "...the right of citizens to take part in the conduct of public affairs..." ICCPR, Art. 26, "All persons are equal before the law..."
<b>MEDIA AND ELECTIONS</b>					
14	Although the legal framework for the media guarantees fundamental rights, there is no specific Press Law in El Salvador, neither a legal regulation establishing equitable access for parties	Strengthen the legal framework by regulating journalism and media, including provisions on equitable access for parties and candidates to the media and media objectivity and impartiality in coverage of electoral	Drafting a Press Law to be presented to the Legislative Assembly.	Legislative Assembly	Freedom of opinion and expression; Fairness in the election campaign CCPR Art 19.2, "...right to

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	and candidates to the media and demanding media outlets and practitioners objectivity, impartiality and balanced reporting when covering electoral processes. (Final Report, Section Media Legal Framework, p. 18).	processes.			<p>freedom of expression... to receive and impart information and ideas ... either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>55/96. UN General Assembly resolution [on the report of the Third Committee (A/55/602/Add.2 and Corr.1) Art. 1-a-(ii) and 1-d-(iv), "Ensuring, through legislation, institutions and mechanisms... the transparency and fairness of the electoral process, including through appropriate access under the law to funds and free, independent and pluralistic media"</p> <p>Council of Europe Recommendation of Measure Concerning Media Coverage of Election Campaigns (2007), Chapter II (1 and 2), "...regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced, and impartial manner... such an obligation should apply to both public service media and private broadcasters."</p>
15	State media in El Salvador have been traditionally the mouthpiece of the government and an instrument for promoting projects carried out by the	<b>Disengage state media from direct government control and convert state media into genuine public service</b>	Endorsement and implementation of the draft of Public Media Bill, already presented to	Legislative Assembly	Freedom of opinion and expression; Fairness in the election campaign

NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
	administration in place. Electoral coverage of the 2019 presidential elections by the state media has been, once again, openly biased in favour of the ruling party. (Final Report, Media Environment and media monitoring findings, p. 19).	<b>broadcasters with editorial independence.</b>	the Legislative Assembly in September 2013.		UN, OSCE, OAS and ACHPR 2017 Joint Declaration on Freedom of Expression and Fake News, Disinformation and Propaganda Art. 3-c, “States should ensure presence of strong, independent and adequately resourced public service media, which operate under a clear mandate to serve the overall public interest and to set and maintain high standards of journalism.”  ACHR Art 13.3, “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”
16	Many web pages with appearance of digital media were created during the campaign period with the sole goal to disseminate fake news and conduct smear campaigning. (Final Report, Media Environment and media monitoring findings, p. 19).	Strengthen fact-checking collective knowledge and monitoring capacity of disinformation in order to minimise dissemination of fake news and smear campaigning.	Requires no change to the legal framework.	Media outlets Civil society	Freedom of opinion and expression; Fairness in the election campaign; Genuine elections that reflect the free expression of the will of voters  UN, OSCE, OAS and ACHPR 2017 Joint declaration on Freedom of expression and fake news, disinformation and propaganda Arts. 4-e, 5-a and

NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
					6-a, "Media outlets should consider including critical coverage of disinformation and propaganda as part of their news service in line with their watchdog role in society, particularly during elections.."
17	Despite that the last amendment of the Telecommunications Law (May 2016) officially recognised, for the first time, community radio stations and eliminated public auction as the only method to allocate radio frequencies, the referred media (20 community radio stations) remain transmitting under one single radio frequency. (Final Report, Media Environment, p. 19).	Minimise concentration of media by allocating specific licences and radio frequencies to community radio stations.	Effective implementation of Telecommunications Law, already amended in May 2016.	Super Intendencia General de Electricidad y Telecomunicaciones (SIGET)	Freedom of opinion and expression; Fairness in the election campaign  ACHR Art 13.3, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."  Telecommunications Law, as amended in May 2016, arts. 9-13.  Council of Europe, Code of Good Practice on Electoral Matters, Explanatory Report, art. 2(3)18.
<b>CAMPAIGN FINANCE</b>					
18	The TSE, although responsible for auditing, lacks resources to audit financing of political parties and	<b>Improve the TSE's capacity to fulfil its obligations to audit political financing, including internet advertising, and adopt</b>	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	Fairness in the election campaign; Rule of law  UN COHR Res. 2000/47 Art.

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	candidates and their campaign activities in all detail. Penalties for the violation of campaign rules are ineffectual and disproportionate. (Final Report, B. Campaign Finance, p. 16).	<b>adequate and proportional sanctions for non-compliance.</b>			1d(iv). ICCPR GC 25, paras. 18 and 19. ICCPR Art.25. UNCAC Arts. 7(1)d, 7(3) and 12(1).
<b>POLITICAL PARTICIPATION OF WOMEN</b>					
19	El Salvador is committed to achieve parity between men and women. (Final Report, Political Participation of Women, p. 21).	Promote effective measures for women to reach representation parity in all elected positions by, for example, introducing quotas to reach representation parity in political party structures and in higher bodies of the electoral administration (e.g. Supreme Electoral Court, Departmental Electoral Boards, Municipal Electoral Boards).	This may require amendments to the Electoral Law, Political Party Law, etc.	Legislative Assembly	Women's participation in public affairs ICCPR, Art. 3 Equality of men and women. Women representation in all spheres of political representation. CEDAW, Art. 4(1) Inter-American Democratic Charter Art. 28 UN General Assembly Resolution 66/130 on Women and Political Participation. Recommendation of the ICCPR 7th Universal Periodic Review (CCPR/C/SLV/7), "The State party should step up its efforts to...increase the participation of women in political and public life and their representation in the public and private sectors..."
<b>POLITICAL PARTICIPATION OF PERSONS WITH DISABILITIES</b>					
20	The legislation also restricts the right to vote for those who have been declared	Remove limitations on the right to vote based on declaration of legal incompetence or	Constitution Art. 74.2	Legislative Assembly	Universal suffrage CRPD Art. 29, Ensure that

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	legally incompetent or of unsound mind. (Final Report, Right to Vote, p. 11).	unsound mind.	Electoral Code. Art 7.b		<p>persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including the right and opportunity for persons with disabilities to vote and be elected.</p> <p>CRPD GC 6, para. 49a, Reform existing legislation to prohibit discriminatory denial of legal capacity, replace those with models of supported decision-making, taking into account universal adult legal capacity without any form of discrimination.</p>
<b>POLITICAL PARTICIPATION OF THE LGBTI COMMUNITY</b>					
21	Approval of a comprehensive Law on Gender Identity is required to guarantee the political rights and protect the dignity of all transgender and transsexual citizens. Such a law would be in line with the 2017 consultative opinion of the Inter-American Court on Human Rights. A draft bill on Gender Identity was introduced by the FMLN before the National Assembly on 22 March 2018, but it has not been so far discussed. (Final Report, Section Participation of the LGBTI community, p. 23).	Ensure transgender and transsexual people’s dignity and full exercise of their active and passive voting rights by allowing them to legally change their name according to their chosen gender.	Requires amendment to Naming Law for Natural Persons and/or enactment of a Law on Gender Identity.	Legislative Assembly	<p>Right and opportunity to vote; Freedom from discrimination</p> <p>ICCPR, Art. 2, “...ensure to all individuals within its territory...”</p> <p>ICCPR GC 25, pars. 3, “...no distinctions are permitted between citizens...”</p> <p>ACHR Arts. 1, 11.2, 18 and 24, “...without any discrimination for reasons of...”</p> <p>ACHR Consultative Opinion OC-24/17.</p> <p>Recommendation of the ICCPR 7th Periodic Review (CCPR/C/SLV/7), “Take the</p>

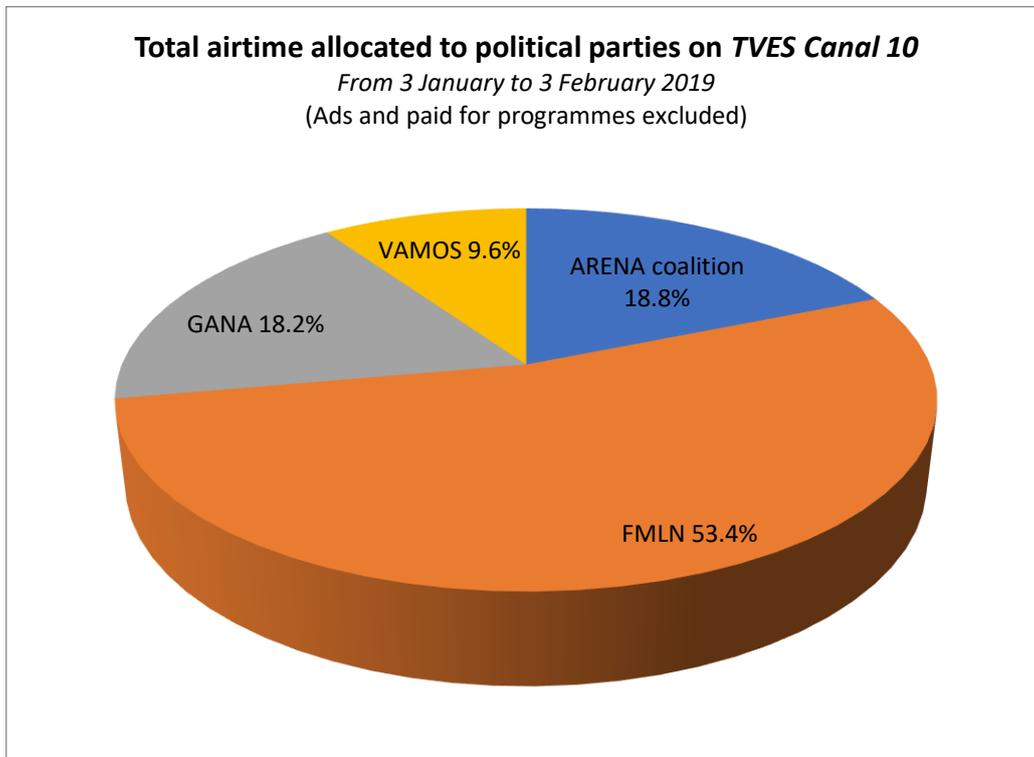
NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
					necessary steps to guarantee full protection from discrimination, both in law and in practice, against ... persons with disabilities, LGBTI persons..."
<b>ELECTORAL TECHNOLOGY</b>					
22	The TSE made significant efforts to develop and adjust this in-house system up until one day prior to election day. Although development of the system started at a relatively late stage of the electoral cycle, the TSE achieved good results. The TSE did not generate documentation encompassing all components of the transmission system and its internal processes. (Final Report, Transmission and Publication of Preliminary Results, p. 28).	Document (for example, through a manual of procedures) all processes and components of the system for transmission and tabulation of preliminary results to ensure quality control in data processing and allow system users and stakeholders to track information relating to the different stages and activities.	No change to legal framework is required.	Supreme Electoral Court (TSE)	Transparency and access to information ICCPR, Art. 25. ICCPR GC 34, para. 19, "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information."

American Convention on Human Rights (ACHR)  
Convention on the Elimination of Discrimination Against Women (CEDAW)  
Inter-American Democratic Charter (IADC)  
International Covenant on Civil and Political Rights (ICCPR)  
International Covenant on Economic, Social and Cultural Rights (ICESCR)  
The *United Nations Convention against Corruption* (UNCAC)  
ICCPR 7th Universal Periodic Review (CCPR/C/SLV/7)

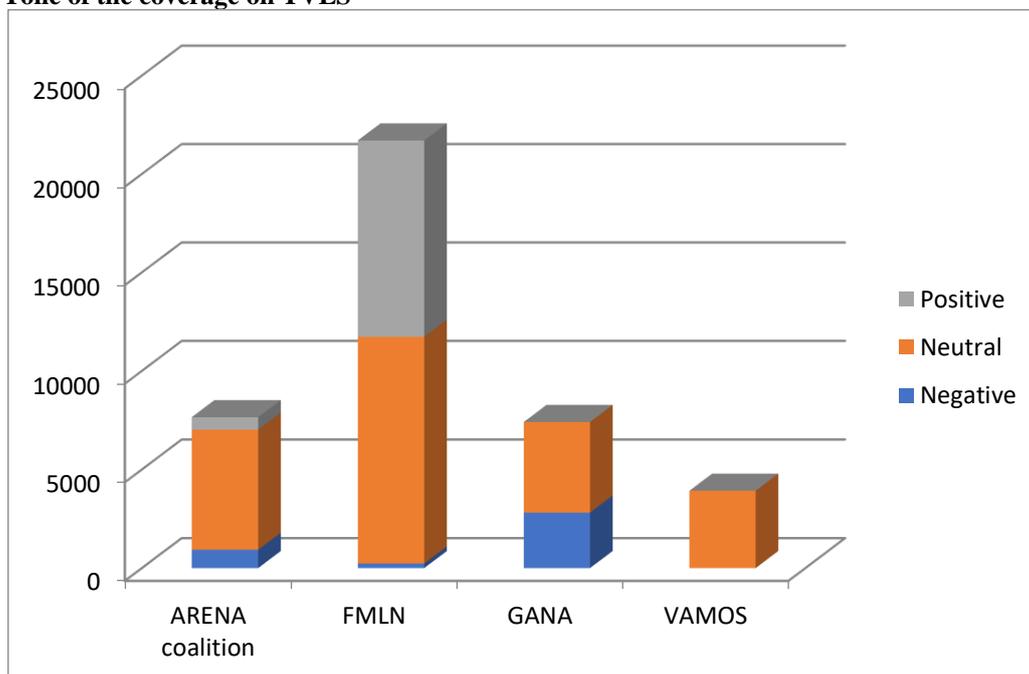
XX. Annexes

A. Annex A: EU EOM Media Monitoring Results

## TVES CANAL 10



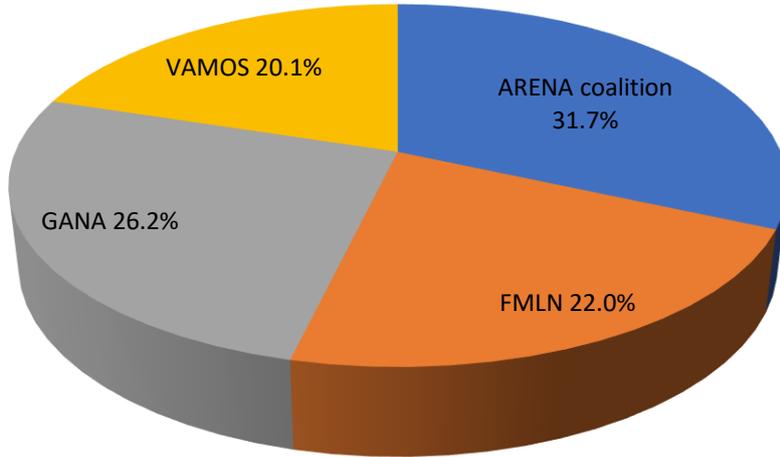
### Tone of the coverage on TVES



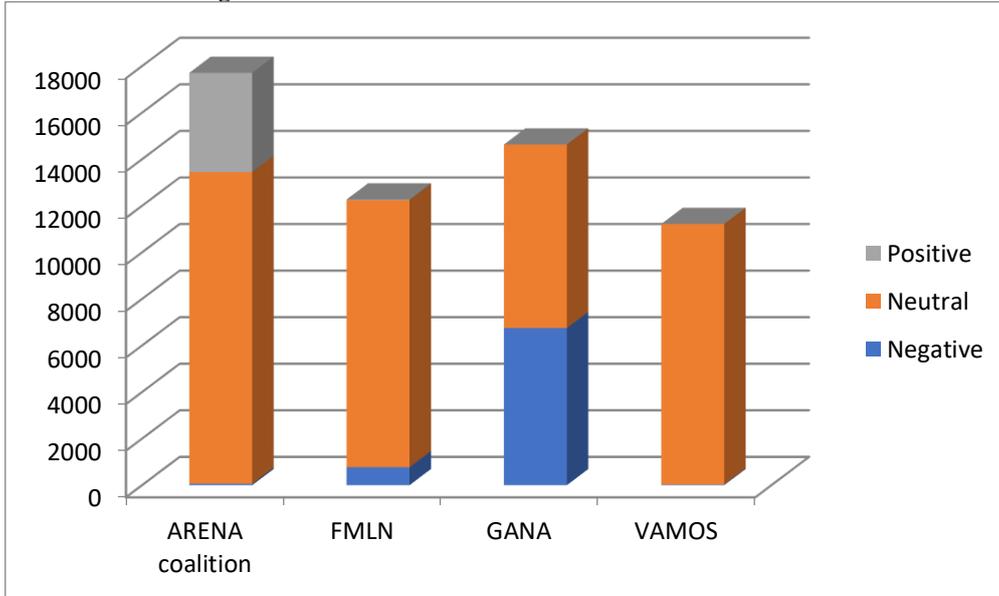
# CANAL 6

## Total airtime allocated to political parties on Canal 6

From 3 January to 3 February 2019  
(Ads and paid for programmes excluded)



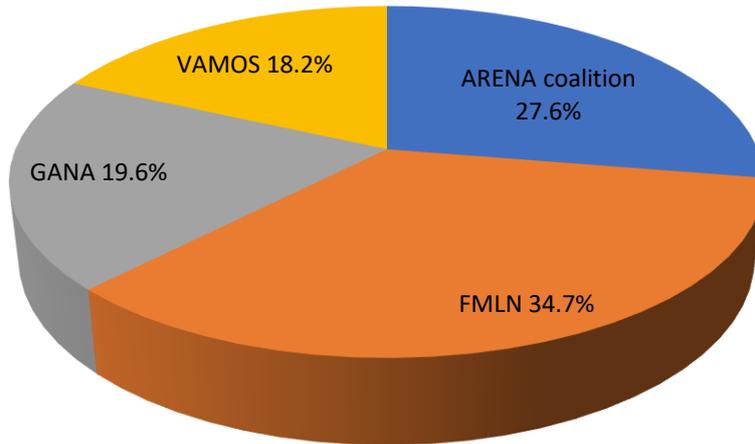
## Tone of the coverage on Canal 6



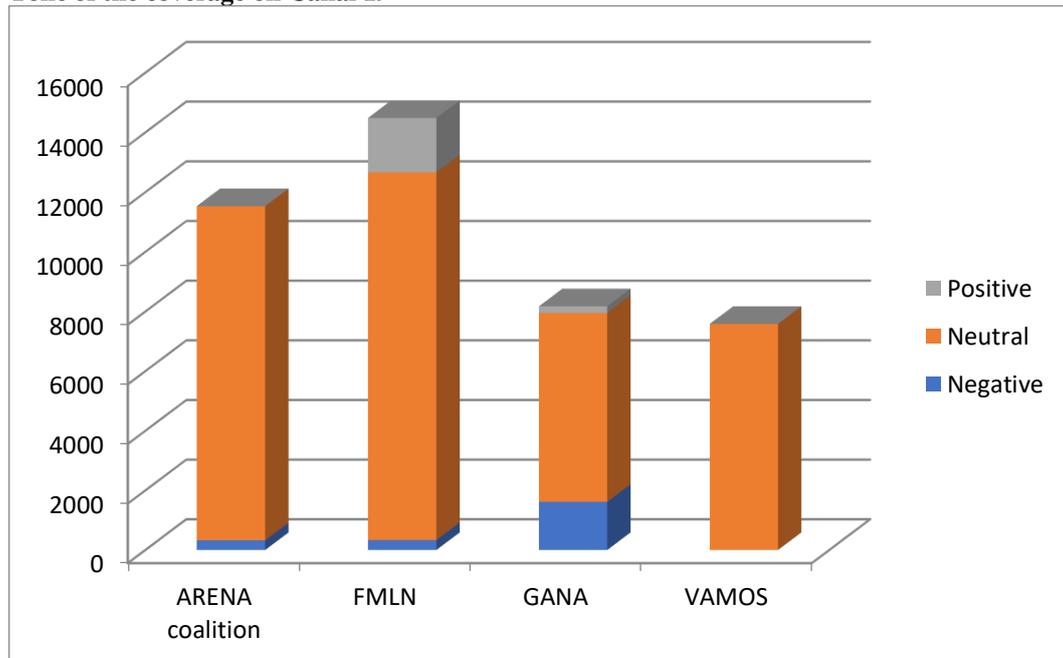
# CANAL 19

## Total airtime allocated to political parties on *Canal 19*

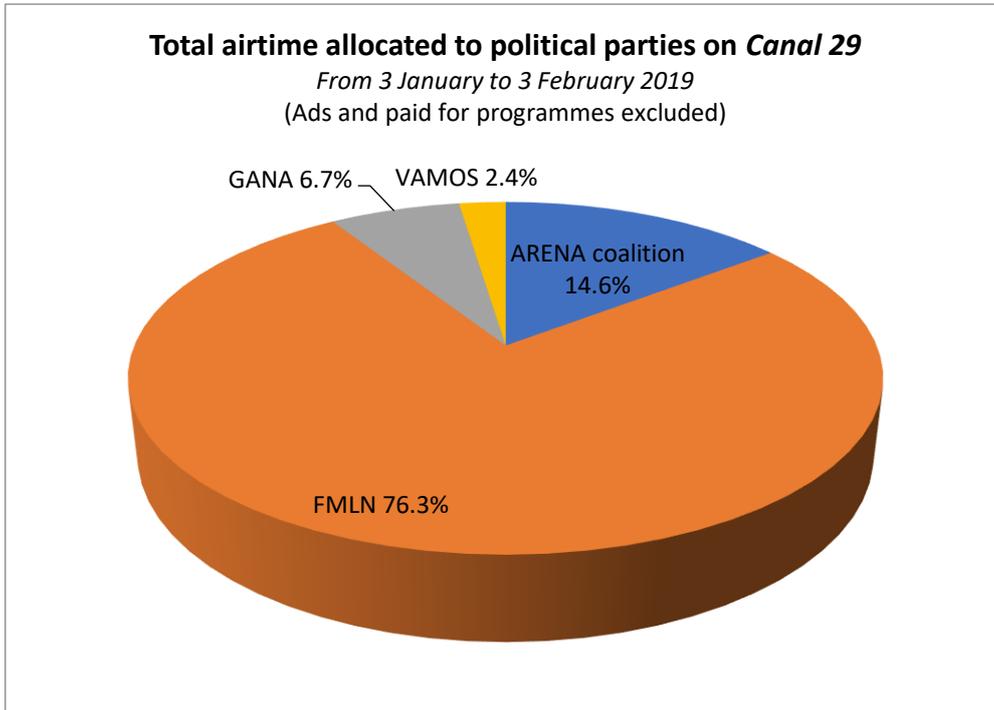
From 3 January to 3 February 2019  
(Ads and paid for programmes excluded)



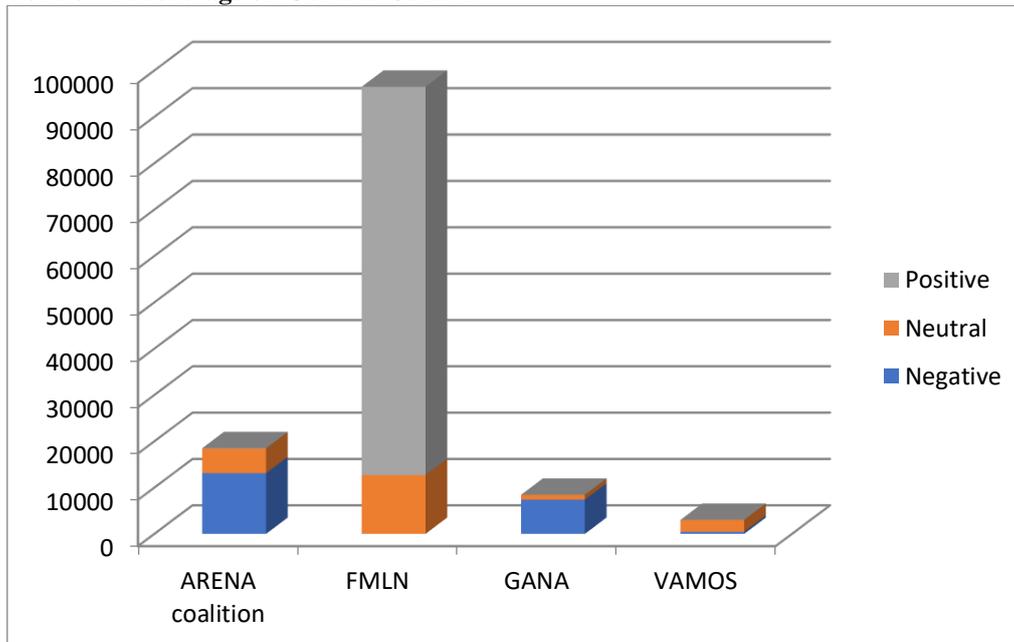
## Tone of the coverage on Canal 19



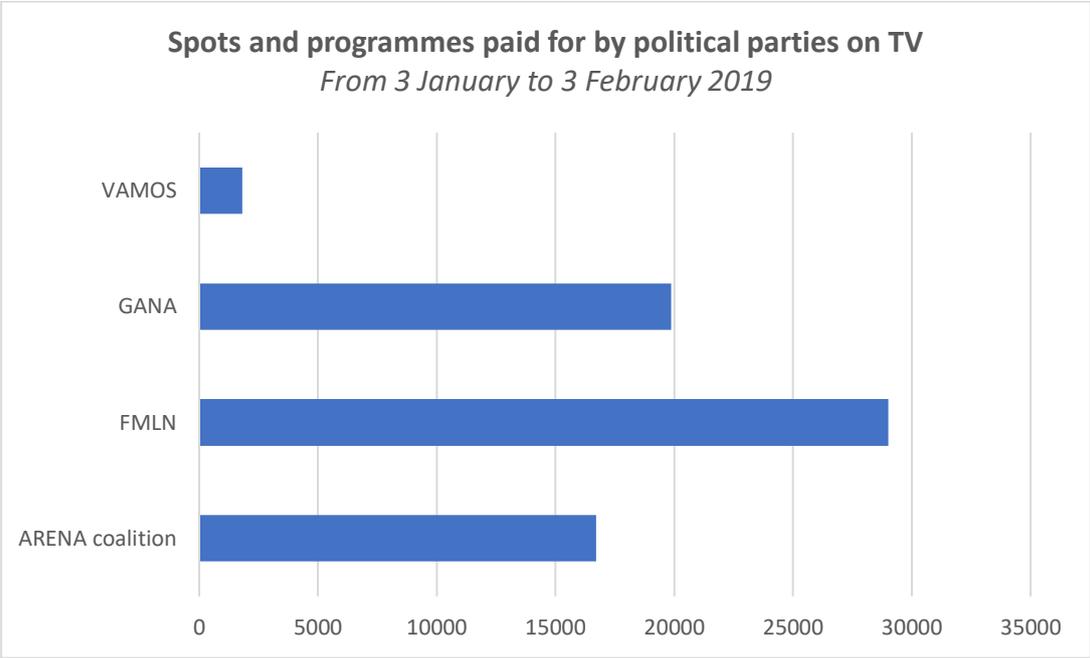
# GENTEVÉ CANAL 29



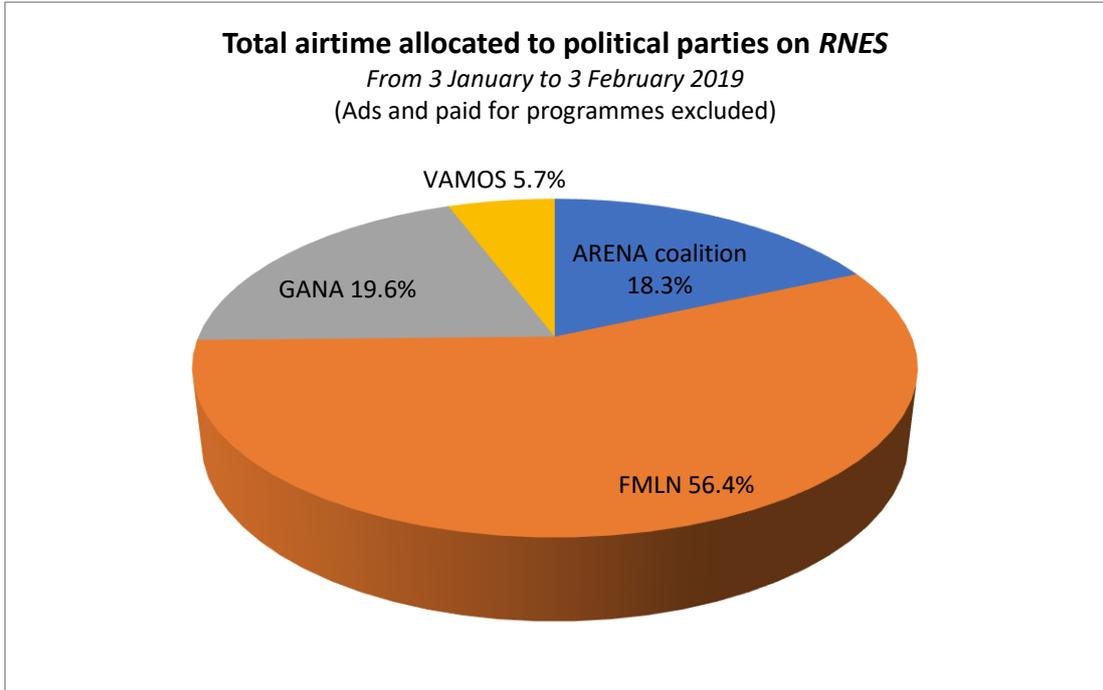
## **Tone of the coverage on Gentevé Canal 29**



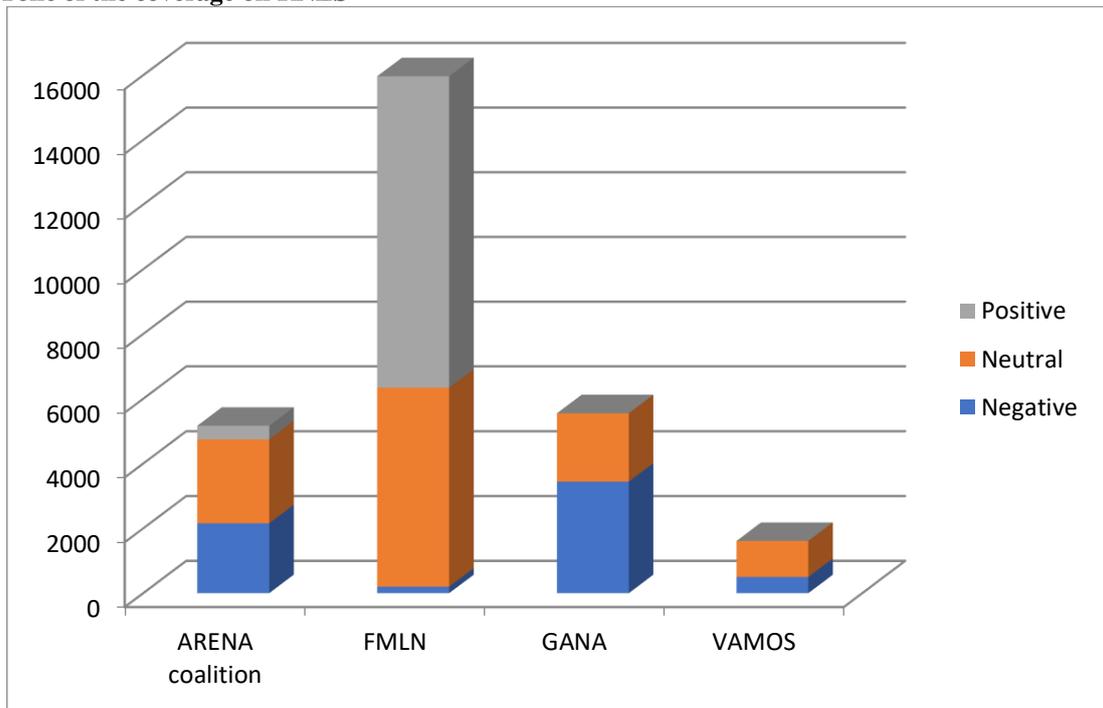
# ELECTORAL PROPAGANDA ON TV



# RNES



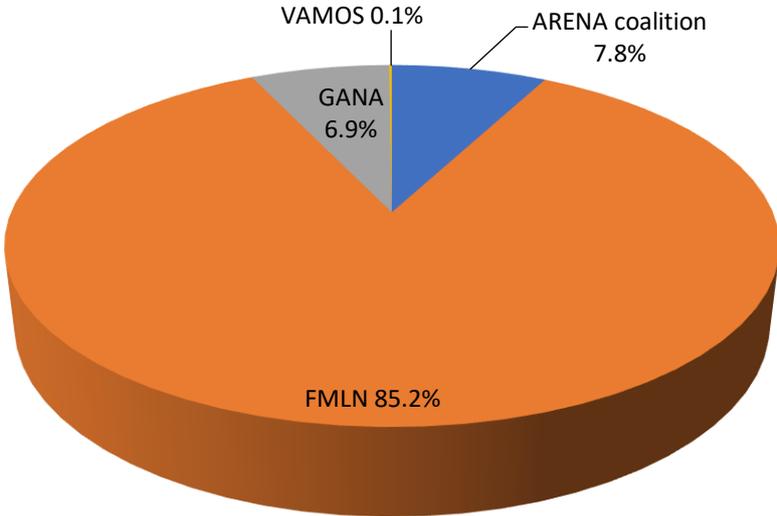
**Tone of the coverage on RNES**



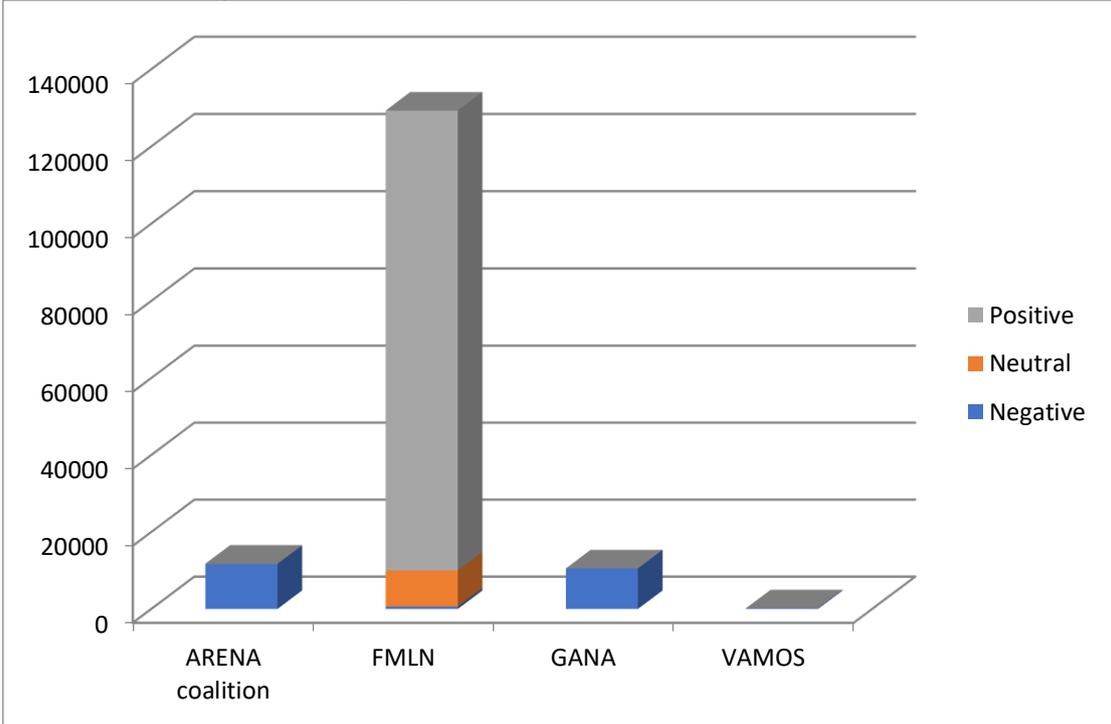
# RADIO MAYA VISIÓN

## Total airtime allocated to political parties on *Radio Maya Visión*

From 3 January to 3 February 2019  
(Ads and paid for programmes excluded)



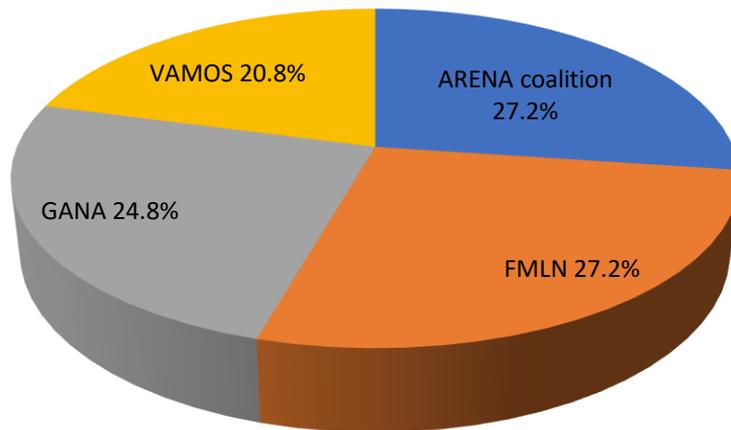
## Tone of the coverage on Radio Maya Visión



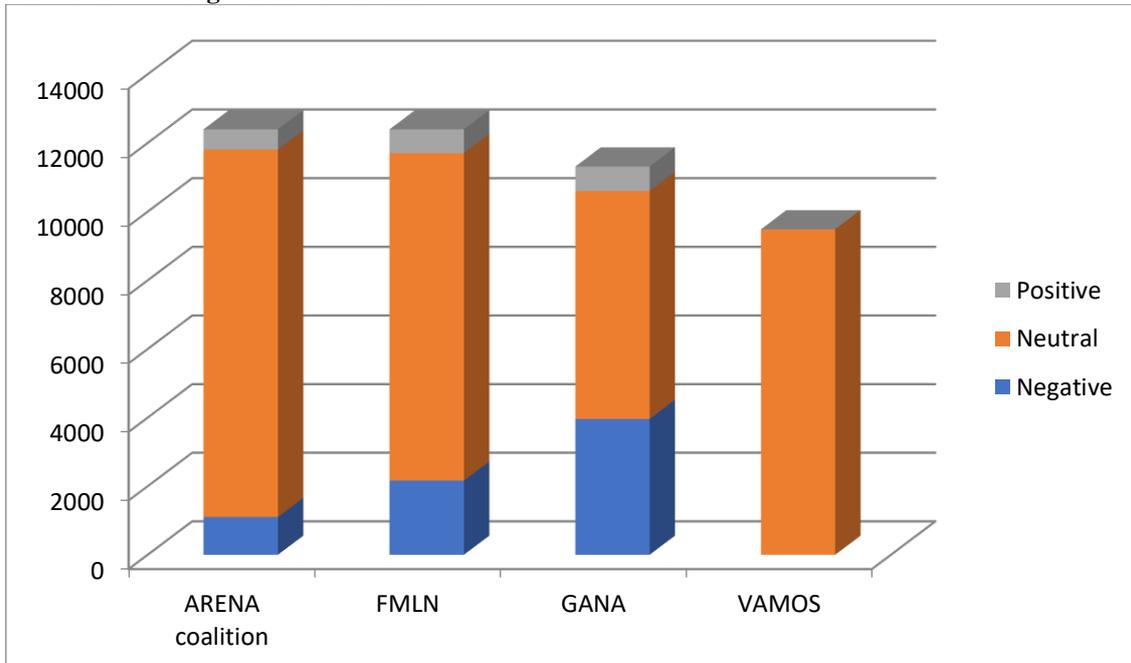
# RADIO YSKL

## Total airtime allocated to political parties on *Radio YSKL*

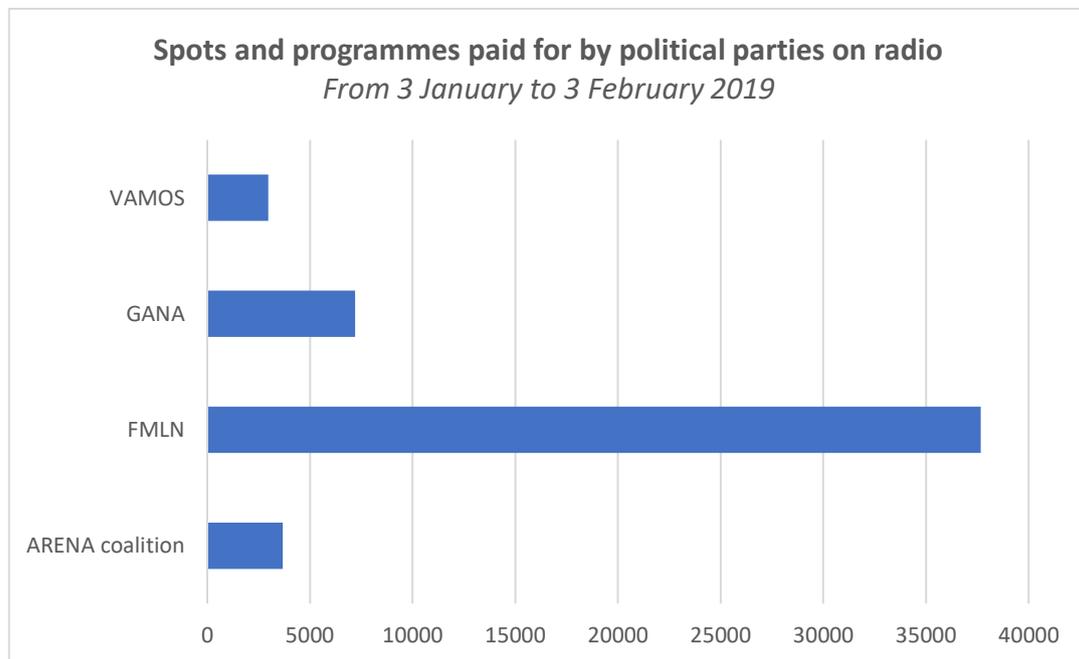
From 3 January to 3 February 2019  
(Ads and paid for programmes excluded)



## Tone of the coverage on Radio YSKL

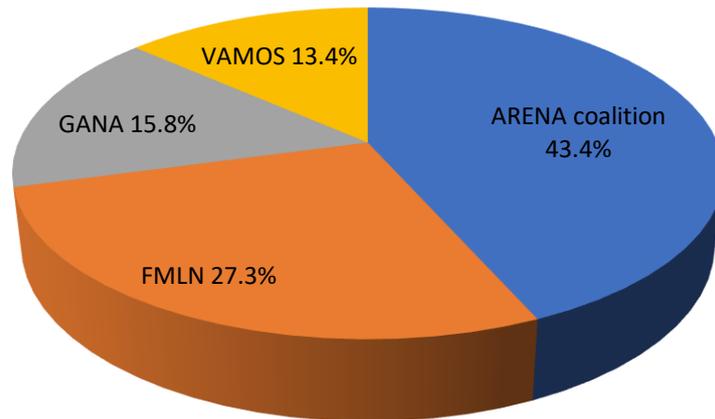


# **ELECTORAL PROPAGANDA ON RADIO**

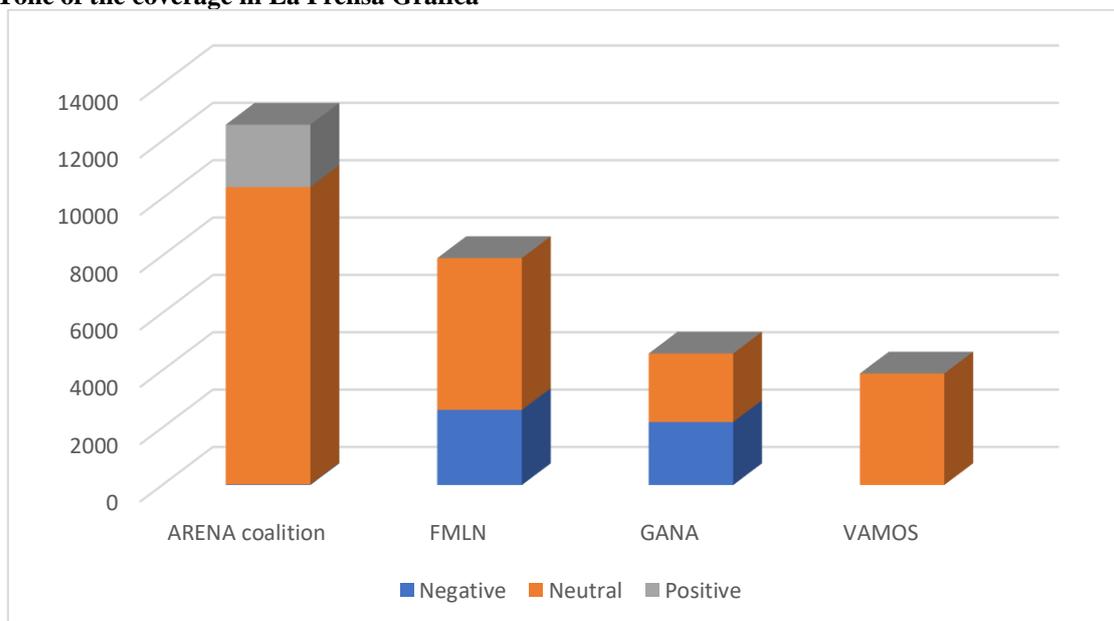


# LA PRENSA GRÁFICA

**Total space allocated to political parties on *La Prensa Gráfica***  
 From 3 January to 3 February 2019  
 (Ads and opinion articles excluded)

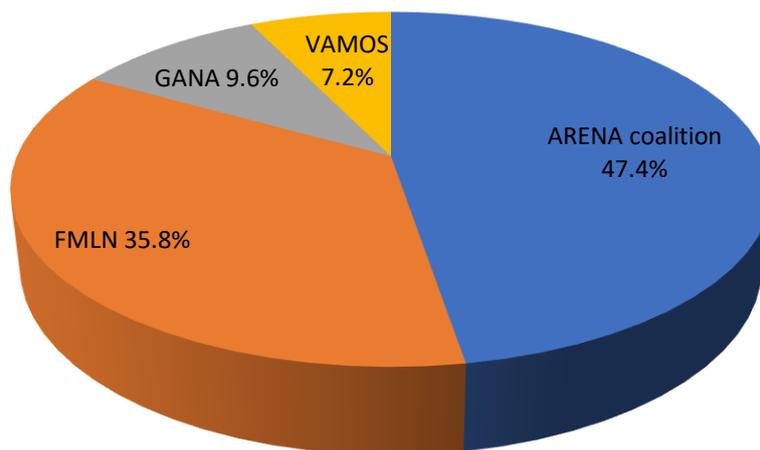


**Tone of the coverage in *La Prensa Gráfica***

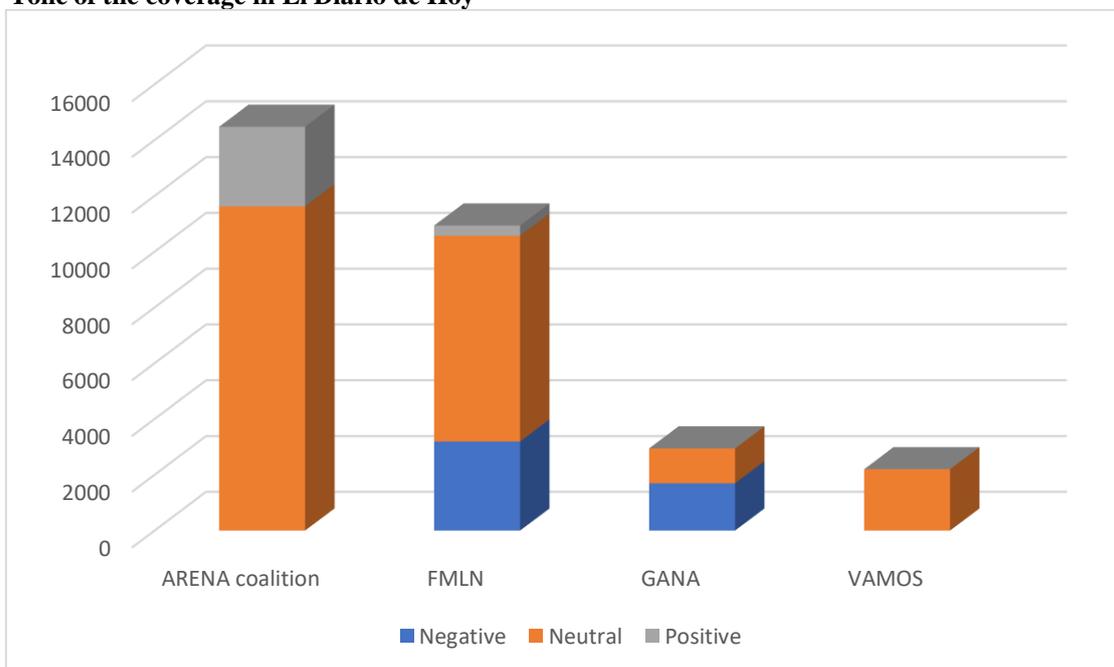


# EL DIARIO DE HOY

**Total space allocated to political parties on *El Diario de Hoy***  
*From 3 January to 3 February 2019*  
 (Ads and opinion articles excluded)

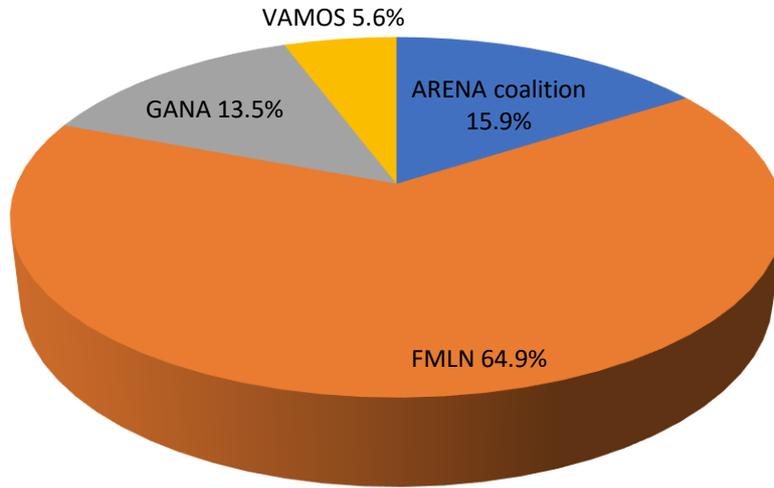


**Tone of the coverage in *El Diario de Hoy***

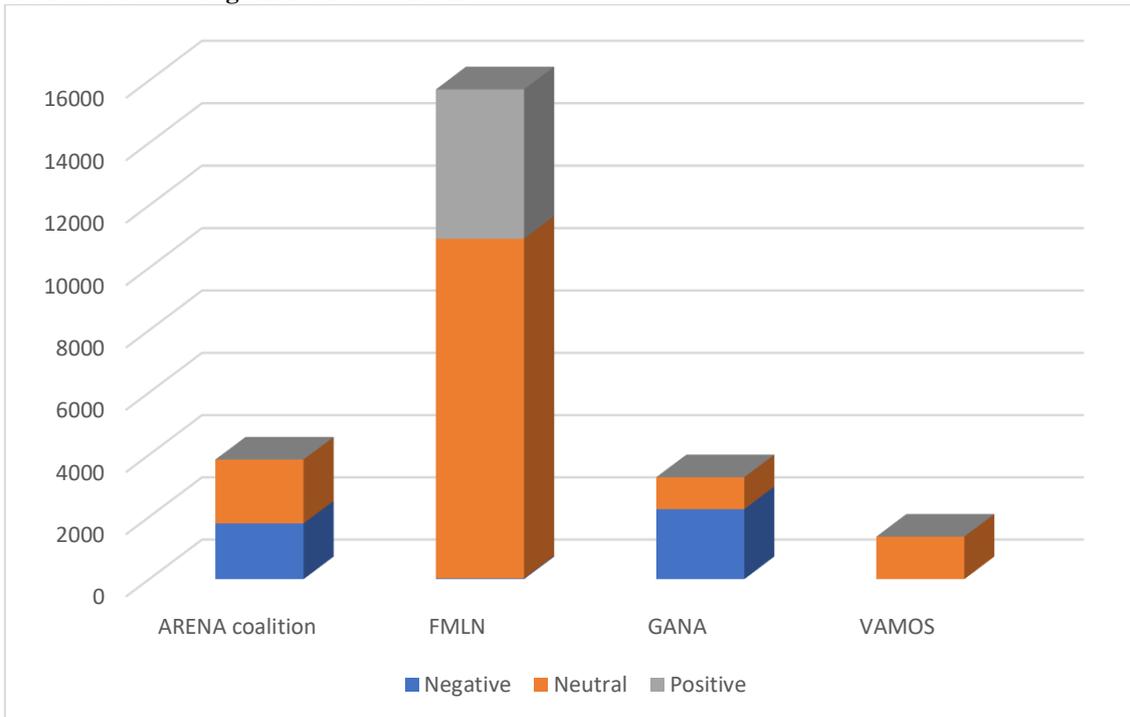


# DIARIO CO LATINO

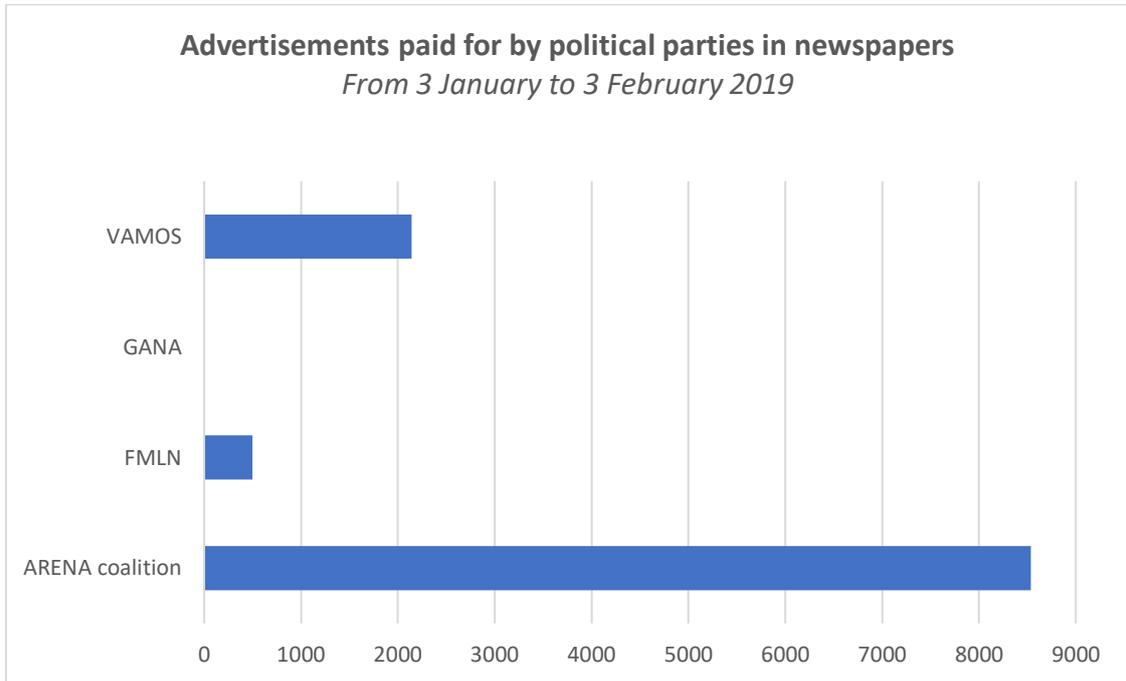
**Total space allocated to political parties on *Diario Co Latino***  
*From 3 January to 3 February 2019*  
 (Ads and opinion articles excluded)



**Tone of the coverage in Diario Co Latino**



# ELECTORAL PROPAGANDA IN NEWSPAPERS



B. Annex B: Election results

**Election Results by Department**

	REGISTERED VOTERS		GANA <i>Nayib Bukele Félix Ulloa</i>		COALITION <i>Carlos Calleja Carmen Aída Lazo</i>		FMLN <i>Hugo Martínez Karina Sosa</i>		VAMOS <i>Josué Alvarado Roberto Ribera</i>		TURNOUT	INVALID
<b>TOTAL EL SALVADOR</b>	<b>5.268.411</b>		<b>1.434.856</b>	<b>53,10%</b>	<b>857.084</b>	<b>31,72%</b>	<b>389.289</b>	<b>14,41%</b>	<b>20.763</b>	<b>0,77%</b>	<b>51,88%</b>	<b>0,96%</b>
<b>SAN SALVADOR</b>	1.437.326	27,28%	479.991	58,32%	246.792	29,99%	86.656	10,53%	9.582	1,16%	57,84%	0,90%
<b>LA LIBERTAD</b>	621.181	11,79%	177.832	51,80%	127.868	37,25%	33.823	9,85%	3.756	1,09%	55,89%	0,97%
<b>SANTA ANA</b>	485.300	9,21%	123.413	54,25%	77.550	34,09%	24.695	10,86%	1.821	0,80%	47,53%	1,13%
<b>SAN MIGUEL</b>	414.431	7,87%	98.064	54,34%	43.960	24,36%	37.529	20,80%	906	0,50%	44,00%	0,88%
<b>SONSONATE</b>	382.083	7,25%	101.794	52,94%	60.796	31,62%	28.599	14,87%	1.095	0,57%	51,01%	1,18%
<b>USulután</b>	306.008	5,81%	64.619	48,30%	35.422	26,47%	33.350	24,93%	406	0,30%	44,15%	0,79%
<b>AHUACHAPÁN</b>	278.814	5,29%	59.689	43,05%	50.051	36,10%	28.257	20,38%	660	0,48%	50,41%	1,09%
<b>LA PAZ</b>	267.039	5,07%	79.803	57,59%	40.762	29,41%	17.357	12,53%	656	0,47%	52,42%	0,85%
<b>LA UNIÓN</b>	240.151	4,56%	49.871	54,47%	29.138	31,82%	12.256	13,39%	295	0,32%	38,66%	1,08%
<b>CUSCATLÁN</b>	198.686	3,77%	57.795	50,09%	39.098	33,89%	17.882	15,50%	609	0,53%	58,72%	0,89%
<b>CHALATENANGO</b>	185.903	3,53%	42.092	44,92%	30.364	32,40%	20.934	22,34%	316	0,34%	50,96%	0,86%
<b>MORAZÁN</b>	160.407	3,04%	31.649	39,10%	26.007	32,13%	23.102	28,54%	193	0,24%	51,09%	0,98%
<b>SAN VICENTE</b>	145.575	2,76%	33.765	46,42%	22.786	31,33%	15.921	21,89%	266	0,37%	50,59%	1,00%
<b>CABAÑAS</b>	139.559	2,65%	31.346	47,17%	26.325	39,61%	8.586	12,92%	199	0,30%	48,28%	0,98%
<b>EXTRANJERO</b>	5.948	0,11%	3.133	86,00%	165	4,53%	342	9,39%	3	0,08%	64,02%	4,33%

### Election Results by size of municipality

<b>Range</b>	<b>No. Of Municipalities</b>	<b>REGISTERED VOTERS</b>	<b>GANA</b>	<b>COALICIÓN</b>	<b>FMLN</b>	<b>VAMOS</b>	<b>TURNOUT</b>	
> 100.000 voters	7	1.386.207	26,31%	58,22%	29,75%	10,79%	1,24%	55,11%
Between 50.000 and 100.000	17	1.174.880	22,30%	57,39%	30,93%	10,75%	0,94%	52,57%
Between 20.000 and 50.000	43	1.251.975	23,76%	51,62%	31,29%	16,54%	0,56%	50,52%
Between 20.000 and 10.000	49	670.366	12,72%	48,75%	32,85%	18,04%	0,36%	48,80%
Between 10.000 and 5.000	75	553.755	10,51%	46,51%	33,56%	19,59%	0,34%	50,32%
< 5.000 voters	71	225.280	4,28%	39,38%	32,29%	28,10%	0,23%	55,68%
<b>TOTAL</b>	<b>262</b>	<b>5.262.463</b>	<b>99,89%</b>	<b>53,10%</b>	<b>31,72%</b>	<b>14,41%</b>	<b>0,77%</b>	<b>51,88%</b>



