

**European Commission**

# EL SALVADOR

## Election Observation Mission

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## I. Executive Summary and Priority Recommendations

The 4 March 2018 elections were the ninth legislative and municipal elections in El Salvador since the 1992 Chapultepec Peace Accords, which had put an end to the twelve-year-long civil war. They were also the second legislative elections under cross-voting, a list system permitting a voter to select names from more than one party list. The electoral landscape was dominated by the Farabundo Martí National Liberation Front (FMLN) and Nationalist Republican Alliance (ARENA), the two competing parties that have held the executive and legislative power in successive elections. The European Union Election Observation Mission (EU EOM), led by Carlos Iturgaiz, Member of the European Parliament from Spain, was deployed to the country between 27 January and 25 March in response to an invitation from the Government of El Salvador and the Supreme Electoral Court (TSE).

Two key political stakes in these elections were whether one of the main parties would lose its veto power in the Legislative Assembly (*Asamblea Legislativa* – AL) for qualified majority legislation and also the fact that the new AL would elect members of key state institutions, including the TSE, the Court of Audit, the Attorney General, the Human Rights Ombudsperson and four of the five members of the Constitutional Chamber of the Supreme Court of Justice for a nine-year term. The latter appointments are particularly relevant given the fundamental institutional and political changes triggered by the decisions of the current Constitutional Chamber.

The legal framework provides a sufficient basis for the conduct of democratic and competitive elections and the Constitution safeguards fundamental human rights, which are protected jurisdictionally before the Supreme Court of Justice. Despite its broad investigative functions, the Human Rights Ombudsperson's Office has no enforcement or penalty powers.

In response to petitions seeking the protection of constitutional rights, the Constitutional Chamber of the Supreme Court of Justice pioneered electoral reforms and issued since 2013 some 10 rulings which impacted on the election system and conduct of polls. The de-politicisation of poll workers is one such reform, as is the suspension of public financing to political parties who fail to provide financial disclosure. Some Chamber decisions still require integration in the legal framework, such is the case for out-of-country voting for legislative and municipal elections planned for 2021 and transparency obligations for independent candidates. Some stakeholders consider the Chamber's rulings contribute to democratic advancement, others feel the Chamber is overstepping its legal competencies and interfering with the electoral process.

Despite abundant electoral reforms and the conformity to international standards and best practices, the EU EOM observed the persistence of several weaknesses in the legal framework, including challenges in the TSE's capacity for timely investigation and sanctioning of electoral infractions due to insufficient human resources, ineffectual and disproportional penalties for the violation of campaign rules, lack of legal criteria for ballot-recounts and an inadequate legal framework for the media.

The TSE's partisan composition, which originates in the 1992 Peace Accords, was meant to allow mutual political control but it is increasingly perceived as inadequate to guarantee the TSE's neutrality. Even though political affiliation of TSE magistrates has been recently prohibited by the Constitutional Chamber, magistrates are widely considered to have clear political preferences and to vote along party lines. The whole electoral administration, including its temporary bodies, is in a transition phase, with elements of the previous system based on political balance and partisanship coexisting with the incipient de-politicisation process that EU missions have been recommending since 2009.



The TSE simultaneously holds electoral administrative functions and jurisdictional functions. This may undermine its independence when adopting judicial resolutions with respect to its own administrative decisions, especially if such resolutions might have a political impact. The TSE enjoys statutory independence and full financial autonomy, but its 2018 budget was substantially reduced by the Treasury in an apparent violation of the law. The growing number of tasks assigned to the TSE and the ever-increasing complexity of the electoral process implies that the institution is actually disposing of fewer resources. TSE jurisdictional functions to investigate and sanction electoral infractions have been particularly hampered by budgetary considerations. The numerous changes to the electoral legal framework posed serious challenges for the TSE as the mandatory implementation of these rulings were not attached to additional budgetary funding.

The logistical preparations for the elections were administered by the TSE with impartiality, transparency and professionalism. Delayed by a late candidate nomination process, the printing of the ballot papers was finalised a few days after the legal deadlines. Budget constraints were observed to limit the TSE's operational capacities in key areas of the electoral process, including the training of poll workers, which fell under the full responsibility of the TSE for the very first time, as a consequence of the de-politicisation or 'citizenisation' process. Insufficient poll worker training, coupled with the complexity of the form filling procedures for the legislative elections, had a negative impact on the overall quality of the data in results protocols.

This was one of the calmest electoral processes since the 1992 Peace Accords, with low-key campaigning characterised mainly by door-to-door canvassing and small gatherings. Campaigning in traditional media such as newspapers, TV and radio decreased in importance compared to the rise of social media. The TSE and 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 and vote-buying. Most incumbent mayoral candidates did not take unpaid leave, thus mixing office with party politics. Vote-buying in cash or in kind is forbidden under the Penal Code, however, many candidates distributed household and building supplies or basic food staples without being sanctioned.

There is legal provision for both public and private sources of campaign funding. Public funding, known as *deuda política* (political debt), is in relation to the number of votes the party won in the previous elections. Private funding can come from legal persons, but not from public institutions, state companies, religious institutions, trade unions, foreign political parties or government agencies, or organised crime. The Constitutional Chamber ordered the suspension of public funding until political parties complied with legal requirements to inform about the origin and spending of campaign funds. Ignoring this order, the Ministry of Finance distributed the *deuda política*. FMLN depended on contributions from party faithful and ARENA relied mostly on a handful of major private donors.

Freedom of expression was respected during the election campaign period, and media access was granted to candidates. According to EU EOM media monitoring, a huge gap separated ARENA and FMLN from the other political parties in terms of paid political advertising. In line with legal provision, free airtime on public media was offered to political parties. Government advertising continued into the campaign period, in violation of established regulations. Pressure on media persisted throughout the campaign and perpetuated the effect of self-censorship and limited independent and investigative journalism.

In El Salvador women represent 53% of the electorate but remain underrepresented in public life. Civil society organisations conclude that structural obstacles endure as many women are constrained by traditional patriarchal roles, persistent discrimination and lack of financial support to seek public



office. The new Legislative Assembly elected 26 women (30%), one less than in the previous legislature, while the number of mayors elected remained low with only 28 (11%). The current 30% legal quota for candidates lists seems outdated as El Salvador committed to reach parity representation and to ensure substantive equality in all decision-making spheres.

Election day was calm and generally well-organised. All polling stations (JRV) were established with at least three members, as prescribed by the law, but in some cases trained citizens poll workers who had been appointed through a lottery system presented for duty but were turned away as the TSE gave preference to political party nominees. This revealed the limits of the attempt to untie the temporary electoral administration from partisan control. In the polling stations observed by the EOM, women comprised 51% of JRV presidents and 59% of other JRV positions. Over 75% of observed polling stations were accessible to persons with disabilities. The presence of party agents contributed to the transparency of the process. However, the excessive presence of 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.

The EU mission's overall assessment of the counting process of the municipal elections was positive, in contrast one third of the observers assessed the counting process of the legislative elections as negative. Poll workers struggled with the complexity of the preferential and cross-voting system and to properly fill in the results protocols. These difficulties resulted in a deficient tabulation of the preferential and cross-votes, which negatively impacted the quality of both preliminary and final results tabulation. These difficulties had been highlighted well in advance by different stakeholders, including the TSE itself.

The system put in place by the TSE to electronically transmit, tabulate and publish preliminary election results was successful, allowing stakeholders to view results online as they were processed. The final results tabulation was adversely affected by the lack of clear and consistent guidelines and by the high incidence of mathematical inconsistencies and other irregularities found in the results protocols, which had the effect of prolonging the process and delaying announcement of final results. In departments and municipalities with tight results, ARENA, GANA and the National Coalition Party (PCN) requested recounts, which led to disputes over several days.

Results revealed that FMLN lost 13 seats in the 84 seat Legislative Assembly, leaving it with 18. As such, the party lost its veto power against majority decisions. ARENA lost just a few thousand votes compared to 2015, but a low voter participation meant that the party gained three additional seats, leaving it with 35 seats. GANA and PCN won 10 and eight seats, respectively. As such, after possible alliances GANA and PCN could play a key role in issuing legislation and/or overruling presidential decisions requiring either simple majority (43) and/or qualified majority (56). Among the country's 262 municipalities, FMLN lost 17 of its previous 82, while ARENA won 10 on top of its previous 129. The newly-elected AL includes 26 women (31%) but only 28 (11%) of the 262 mayors are women. Analysts point out that these noteworthy changes in the country's political landscape are not so much due to an ideological shift to the right, but more in response to a disenchanting FMLN electorate that disapproved of the government's performance in public security, economic growth and job creation. TSE preliminary results figures put participation at 45%, three percent below the 2015 turnout.

#### Priority Recommendations:

1. Calibrate administrative and penal sanctions for electoral infractions in order to achieve a more effective electoral justice.



2. Enhance the consistency of the final results tabulation process by establishing clearer criteria for the review of results protocols, correction of errors and opening of ballot boxes.
3. Forbid all forms of canvassing and particularly the use of campaign material inside voting centres, such as distinctive partisan clothing.
4. Continue to untie the electoral administration from partisan control through the 'citizenisation' of its temporary structures, this would ideally be accompanied by a comprehensive civic education campaign.
5. Improve the TSE's capacity to fulfil its obligations to audit political financing and adopt adequate and proportional sanctions for non-compliance.

## II. Introduction

Following an invitation to observe the 2018 legislative and municipal elections, the EU signed Memoranda of Understanding with the Government of El Salvador and the Supreme Electoral Court (TSE) on 25 January 2018. A European Union Election Observation Mission (EU EOM), led by Chief Observer Carlos Iturgaiz, a Member of the European Parliament from Spain, deployed to San Salvador with a Core Team of nine experts on 27 January. The mission was strengthened with the arrival of 28 Long Term Observers (LTOs) on 4 February and the integration of 28 Short Term Observers (STOs) on 26 February. In addition, the mission was joined by 20 Short Term Observers from the EU member states diplomatic community resident in El Salvador and a five-person delegation of Members of the European Parliament, led by Javier López MEP from Spain. This brought the full complement of EU observers to 88. Observers were drawn from 27 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 obligations and commitments 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

On 4 March 2018 Salvadoreans went to the polls to elect the 84 members of the Legislative Assembly (*Asamblea Legislativa* – AL) and 262 Municipal Councils for a three-year term of office. These were the fifteenth elections in El Salvador since the 1992 Peace Accords, which had put an end to the twelve-year-long civil war. They were also the second legislative elections under cross-voting, a list system permitting a voter to select names from more than one party list. Ten parties contested the elections, some forming coalitions at the 14 departmental and 262 municipal levels.

The elections did not only serve as a political litmus test for next year's presidential elections, but importantly the new AL will elect members of key state institutions, including the TSE, the Court of Audit, the Attorney General, the Human Rights Ombudsperson and four of the five members of the Constitutional Chamber of the Supreme Court of Justice for a nine-year term. The latter appointments are particularly relevant given the fundamental institutional and political changes triggered by the decisions of the current Constitutional Chamber.



A two-thirds or 56-seat vote is required for approving the national budget, loans and the aforementioned appointments. Over the past two decades, the ruling leftist Farabundo Martí National Liberation Front (FMLN) and opposition rightist Nationalist Republican Alliance (ARENA) each held sufficient seats to block the other in the AL. If compromise for any legislative action could not be obtained, both parties depended on the support of Deputies from three right-leaning parties, most relevant among them the 11 Deputies of the Grand Alliance for National Unit (GANU), a 2010 breakoff from ARENA.

The key issue in these elections was whether FMLN would lose three or more AL seats and consequently its veto power for qualified majority legislation. Political stalemate in the AL, especially over the past four years, combined with the poor economic and security environment to result in significant voter discontent.

#### IV. Implementation of Previous EOM Recommendations

Several of the recommendations made by previous EU missions were fully or partially taken into consideration by the competent authorities (see Annex A). Recommendations aimed at improving the multiparty system, strengthening the independence and transparency of the electoral administration, the control of political party financing, ensuring political rights for all citizens. These recommendations remain relevant and important for consolidating El Salvador's democratic institutions.

In recent years the Constitutional Chamber of the Supreme Court of Justice introduced electoral reforms that were seen as democratic advances such as the introduction of independent polling officers and new criteria for internal party elections. Many reforms were in line with previous EU mission recommendations but were introduced without wide consultation with stakeholders. Key recommendations that were addressed or still require attention include the following:

- i. *The 2012 EU EEM endorsed moving from a 'winner takes all' to a multiparty system for municipal councils to strengthen democratic representation and participation at the local level.* Election of multiparty municipal councils for the first time in 2015 was a factor that reduced tensions in the campaign by ushering in a cooperative system that better fosters dialogue and negotiation. Among the 46 municipal level alliances for the 2018 polls, twelve bridged the left-right ideological gap as they comprised combinations of the FMLN, GANU and Christian Democratic Party (PDC). All parties consulted by the mission considered the interim experience of multiparty councils as very positive.
- ii. *The 2009 EU EOM and 2012 and 2014 EEMs recommended the Supreme Electoral Court would benefit from being depoliticised, with appointments made according to legally-established criteria of neutrality and technical experience.* The Constitutional Chamber initiated the 'citizenisation' of electoral bodies, to untie the electoral administration from partisan control, ruling in 2015 that members of Temporary Electoral Bodies (OETs) should not have political affiliation. The decision also held that parties without legislative representation and independent candidates have the right to propose members to OETs. In 2017, the Legislative Assembly amended articles 113 and 242 of the Election Law, incorporating a number of measures to facilitate the non-partisan participation in OETs. The process remains nevertheless incomplete, as political parties retain the right to propose members of all





electoral bodies despite the prohibition of formal political affiliation. The 2018 EU EOM observed that most OET members retained a close link with the political instance that proposed them.

- iii. *The 2009 EU EOM and 2012 and 2014 EEMs called for improved legislation to ensure transparency in political financing, including reporting on income and expenditure, as well as an obligation for the TSE to audit political party and candidates' financial records.* Seemingly little has been done to support more effective enforcement and accountability measures regarding political finance. Although the TSE has the mandate to supervise political finance, it does not have the requisite budget nor human resources to undertake detailed audit.
- iv. *The 2009 EU EOM, 2012 EU EEM and 2014 EU EEM recommended limitations on political parties' campaign spending, including on media advertising, and also recommended free airtime advertising in the public media in equal conditions for all political parties.* Introduction of the 2013 Political Parties Law partially regulates political party funding. Free airtime advertising is contemplated in the 2013 Political Parties Law which enacts an equity/equality based system in the public media.
- v. *The 2009 EU EOM and 2012 and 2014 EEMs recommended the TSE's administrative and judicial functions be separated and put under the control of two different institutions.* The separation of administrative and judicial functions was not taken into consideration.
- vi. *The 2009 EU EOM and 2012 and 2014 EEMs encouraged measures to ensure voting for citizens in hospitals and those detained on remand, as well as members of the military and cadets in military academies.* This recommendation was partially implemented. A 2014 Constitutional Chamber ruling provides for members of the armed forces to vote at the polling station where they are deployed. A 2017 legislative decree provides that members of the National Public Security Academy (ANSP) and the Armed Forces of El Salvador (FAES), regardless of the address that appears on their Unique Identity Document (DUI), may vote for presidential and Central American Parliament (PARLACEN) elections wherever they are deployed. In the case of legislative and municipal elections they may exercise suffrage if their residence corresponds to the departmental and municipal constituency where they are deployed.
- vii. *The 2009 EU EOM and 2012 EEM urged greater respect for the campaign silence period, and especially noted that the excessive presence of partisan activities in polling centres did not contribute to a neutral voting environment.* These recommendations were not taken into consideration even though they could have been undertaken unilaterally by the TSE.

## V. Legal Framework

### A. International Principles and Commitments

The legal framework provides a sufficient basis for the conduct of democratic and competitive elections. The 1983 Constitution and its several amendments incorporate all international and regional treaties ratified by El Salvador. The most significant treaties for the protection of human rights and democratic government are the 1966 International Covenant on Civil and Political Rights (ICCPR),



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.

At regional level El Salvador is politically committed to the Charter of the Organization of American States, 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 safeguards fundamental human rights in connection to the exercise of political rights. Citizens over 18 years have the right to vote. The vote is free, direct, equal and secret. The Constitution enshrines the right of association, the right to constitute political parties and the right to stand as a candidate, although the latter comes with a few constitutional limitations. Other fundamental rights include freedoms of thought, information, opinion and equality before the law. Fundamental human rights are protected jurisdictionally before the Supreme Court of Justice.

A national human rights agency was established in 1992 following the Peace Accords to institutionalise human rights protection. The Human Rights Ombudsperson's Office has broad investigative powers and promotes the accountability of the state and respect for the rule of law. Despite its investigative functions the Office has no enforcement or penalty powers. It was active in the supervision of election day and during tabulation of final results. The current direction of the Ombudsperson's Office has been under public scrutiny for its diminishing support to the LGBTI community.

#### C. Electoral Legislation

The electoral legal framework comprises the Constitution, Legislative Assembly laws, rulings of the Constitutional Chamber of the Supreme Court of Justice, and rules and regulations issued by the TSE. The main legal instruments for the registration of voters and the conduct of elections are the 1995 National Registry of Natural Persons Law and its Regulation, the 2013 Election Law, the 2013 Political Party Law and the 2010 Law for Non-Partisan Candidates.<sup>1</sup>

In response to petitions seeking the protection of constitutional rights, the Constitutional Chamber pioneered electoral reforms and issued since 2013 some 10 rulings which impacted on the election system and conduct of polls. While some stakeholders consider the Chamber's rulings contribute to democratic advancement, others feel the Chamber is overstepping its legal competencies and interfering with the electoral process. Despite the Chamber's lack of consultative exchange with stakeholders, the AL and the TSE implemented all judgements.

Subsequent to the Chambers rulings, the AL was compelled to legislate and implement the new parameters. Not all Chamber decisions are integrated in the legal framework, with gaps and inconsistencies persisting. Such is the case for out-of-country voting for legislative and municipal elections planned for 2021 and transparency obligations for independent candidates which still need to be detailed and introduced.

Major legal changes initiated by the Chamber include: a) the apolitical composition of polling station staff implemented for the first time in 2018 and the possibility for members of the armed forces and the police to cast their ballot at the polling station where they will serve on election day (both recommended by the EOM 2009), b) the modality of cross-voting or *panachage* introduced for the

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<sup>1</sup> Other secondary laws include the 2001 Law on the Issuing of the Identity Document, the 2005 Rules for the Residential Vote, the 2013 Law on Out-of-Country Voting for Presidential Elections, the 2014 Regulation on Election Observation and the Penal Code.



2015 legislative election, c) political parties must disclose the origin of campaign financing for 2014 and 2015, and d) the failure to provide access to financial disclosure is sanctioned with the suspension of public financing to political parties.

Further changes to the legal framework include: a) the obligation for political parties to hold internal elections for the selection of candidates, b) parties and independent candidates must now publicise the names of donors when individual and corporate contributions exceed 1,500 USD and 5,000 USD per year, respectively, c) the Chamber declared the practice of changing parties during a legislature was unconstitutional, considering it deceived the electorate, and d) as recently as February 2017, the AL enacted new legislation in response to a Chamber ruling that extended the possibility for citizens to formally challenge election management body decisions at district and national levels.

The numerous changes to the electoral legal framework pose serious challenges for the TSE as the mandatory implementation of these rulings are not attached to additional budgetary funding.

Despite abundant electoral reforms and the conformity to international standards and best practices, the EU EOM observed the persistence of several weaknesses in the legal framework including challenges in the TSE's capacity for timely investigation and sanctioning of electoral infractions due to insufficient human resources, ineffectual and disproportional penalties for the violation of campaign rules, lack of legal criteria for ballot-recounts and an inadequate legal framework for the media.

#### D. Election System and Constituency Delimitation

The Legislative Assembly incorporates 84 deputies elected from plurinominal constituencies for three-year renewable mandates. Independent candidates are allowed. The electoral system, based on the constitutional requirement of proportionality, is a multiparty open-list with the modality of cross-voting or *panachage*.

Legislative Assembly seats allocation is determined on the base of entire votes and fractional votes which result from the way the voter chooses to mark the ballot. Voters can mark the party on the ballot and candidate preferences within a party list or mark a number of candidates from different lists (*panachage*). The maximum selection of candidates through cross-voting cannot exceed the number of members in that constituency.

The 262 Municipal Councils are elected for a three-year term by majority vote. The number of councillors varies in accordance with the population of a municipality. Councillors are assigned by a proportionality representation system and there are no independent candidates. Election boundaries follow municipal territorial divisions.

Electoral constituency boundaries for the Legislative Assembly coincide with the 14 department administrative divisions. Constituencies elect between three and 24 representatives, depending on the population within each district.<sup>2</sup> Elected deputies represent the entire Salvadorean population.<sup>3</sup>

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<sup>2</sup> The number of deputies to be elected in each electoral district is defined by the Election Law, Art. 13. The number of inhabitants in a given department is divided by the national population coefficient. This coefficient is calculated by dividing the number of inhabitants based on the national census by 84, the total number of deputies. San Salvador is the biggest constituency with 24 deputies, followed by La Libertad with 10 and Santa Ana with 7. San Miguel and Sonsonate have 6 each, Usulután 5; Ahuachapán and La Paz four each. The remaining departments of La Unión, Cuscatlán, Chalatenango, Morazán, San Vicente and Cabañas are small constituencies with only 3 deputies each. The law provides for a minimum of 3 deputies, regardless of population size.

<sup>3</sup> Constitution, Art. 125.



Since the Peace Accords, and as required by the Constitution, the national distribution of seats was adjusted three times to reduce disproportionality resulting from changing populations.<sup>4</sup>

## VI. Election Administration

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

The Supreme Electoral Court (Tribunal Supremo Electoral – TSE) is the highest electoral authority, both at the administrative and the jurisdictional level. The TSE is composed of five magistrates and their alternates appointed by the Legislative Assembly for a period of five years (2014-2019). As stated in the Constitution, three magistrates are proposed by the three most voted political parties in the last presidential elections and two by the Supreme Court of Justice.

The TSE partisan composition, which originates in the 1992 Peace Accords, was meant to allow mutual political control but it is increasingly perceived as inadequate to guarantee the TSE's neutrality. Even though political affiliation of TSE magistrates has been recently prohibited by the Constitutional Chamber, magistrates are widely perceived to have clear political preferences and to vote along partisan lines. The whole electoral administration, including its temporary bodies, is in a transition phase, with elements of the previous system based on political balance and partisanship coexisting with the incipient de-politicisation or citizenisation process that EU missions have been recommending since 2009.

The TSE simultaneously holds electoral administrative functions and jurisdictional functions. This may undermine its independence when adopting judicial resolutions with respect to its own administrative decisions, especially if such resolutions might have a political impact. Previous EU recommendations on separation of the two functions have not so far been taken into consideration.

The TSE enjoys statutory independence and full financial autonomy, especially for special expenses during election years.<sup>5</sup> The Treasury's 35%<sup>6</sup> cut to the 2018 TSE budget was an apparent violation of the law and threatened the institution's full decision-making autonomy. Some decisions, such as to have electronic vote counting or appoint legal counsel to the JEDs, could not be implemented due to the budget cut. Other decisions, including the choice of the transmission system, were heavily influenced by funding constraints. Even though the final amount approved by the AL is somewhat in line with previous election budgets, the growing number of tasks assigned to the TSE and the ever-increasing complexity of the electoral process implied that the institution actually disposed of fewer resources.

TSE jurisdictional functions to investigate and sanction electoral infractions were particularly hampered by budgetary considerations. The late approval of the pre-electoral budget – almost four months after the TSE made its initial request and only ten months short of election day, when some of the budgeted activities had already started – raised concerns that will have to be addressed for future elections.

Temporary electoral structures consisted of 14 Departmental Electoral Boards (JEDs), 262 Municipal Electoral Boards (JEMs) and 9,422 Polling Stations (JRVs). Their members were proposed by political

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<sup>4</sup> Constitution, Art. 79.

<sup>5</sup> Election Law, Arts. 40, 42 and 274

<sup>6</sup> Taking into account the new tasks assigned to the TSE following Chamber rulings in recent years, the TSE budgeted USD 39,383,070 but only received USD 25,620,320 (plus an additional USD 4 million at the beginning of January). Among the more affected programmes were transmission and processing of preliminary results (-56%), training (-53%) and voter education (-33%).



parties,<sup>7</sup> but could no longer have partisan affiliation. Both JEDs and JEMs had a maximum of five and a minimum of three members and were constituted three months prior to the elections. All temporary organs were hierarchically under the command of the TSE but enjoyed significant discretion in decision-making.<sup>8</sup>

In addition to proposing electoral administration members, all legally registered political parties could nominate a member of the Electoral Supervisory Board (JVE). This permanent body was responsible for overseeing all TSE activities from voter registration to tabulation of preliminary and final results. The JVE also had a consultative role which allowed it to submit reform proposals, but these were not always considered by the TSE.

#### B. Administration of the Elections

The logistical preparations for the elections were laid out in a comprehensive General Election Plan (PLAGEL 2018) which was administered by the TSE with impartiality, transparency and professionalism. Delayed by a late candidate nomination process, the printing of the ballot papers was finalised a few days after the legal deadlines. The Department of Electoral Operations managed to securely deliver the electoral materials in due time.

Budget constraints not only eroded the TSE's role as the highest electoral authority, but also unduly limited its operational capacities in key areas of the electoral process, including the training of JRV members, which fell under the full responsibility of the TSE for the first time as a consequence the citizenisation process.

The prohibition of poll workers holding partisan affiliation also meant that most parties struggled to fill their assigned quotas for the temporary electoral bodies. Almost half of the JEDs and JEMs missed at least one member (in some cases the President)<sup>9</sup> as smaller parties were unable to nominate anyone. Since all parties, barring ARENA and FMLN, failed to propose in due time enough poll workers to establish the 9,422 JRV, the TSE took a decision to randomly select 28,000 poll workers from among ordinary citizens.<sup>10</sup> Organisational and communicational shortcomings, coupled with the absence of an outreach campaign on the necessity of the citizenisation of the electoral staff, resulted in some public backlash, which was unhelpfully magnified by the media.<sup>11</sup> Even though most of the randomly selected poll workers eventually joined the process, opinion polls revealed that the TSE's popularity and public trust ratings were somewhat adversely affected.

While the TSE was unable to train all 94,220 poll workers, it managed to ensure the legal minimum of trained staff were ready to establish polling stations on election day. The TSE chose to treat party-nominated and citizen poll workers differently,<sup>12</sup> and when establishing polling stations on election day gave preference to the former. The TSE decision to allow late proposals of poll workers by political

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<sup>7</sup> The main political parties nominate four members, while the fifth is selected by drawing lots among the remaining parties.

<sup>8</sup> The JRV has the authority (although not clearly regulated in the Election Law) to decide the validity of a vote by simple majority, and the TSE itself, according to the Election Law, has no authority to change such decisions.

<sup>9</sup> 6 out of 14 JEDs were functioning with only four members; JED Cuscatlán was missing the President. Out of 228 JEMs contacted by EU observers, only 87 were formed by 5 members and 13 were functioning without a President. In almost all cases the missing members should have been appointed by PDC, DS, PSP, PSD, FPS or CD.

<sup>10</sup> The pool of eligible citizens was around 1,400,000, after exclusion of: people with serious health issues or older than 60, members of the Police or the Army, public employees, magistrates, illiterate, people who did not vote in past elections, party members. That last requisite was difficult to verify as party affiliation is considered sensitive data and the TSE only had access to information provided by the parties

<sup>11</sup> Contrary to media speculations, only 10% of the randomly selected citizens officially requested dismissal from duty. It must be noted that fines for not accepting the selection were much higher than the payment for accepting it.

<sup>12</sup> Credentials for the drawn citizens were distributed directly by the TSE, while the others were distributed through political parties. Political party nominees were considered trained after one session, others after two.



parties revealed the limits of the attempt to untie the temporary electoral administration from partisan control. Notwithstanding the impressive effort by the TSE, insufficient training coupled with the complexity of the form filling procedures for the legislative elections had a negative impact on the overall quality of the data on results protocols.

The quality of election preparation undertaken by the JEDs and JEMs was unevenly rated by EU observers. Some praised their efforts, while others insisted on the lack of proper coordination with the Department of Electoral Operations (DOE) and the inconsistent exercise of their jurisdictional functions, especially with respect to the municipal candidate nomination process. Most observers agreed that JEDs and JEMs lacked adequate funding and did not receive consistent or comprehensive communication from the TSE, which resulted in misinterpretation of instructions and JED and JEM members relying on the political party that had proposed them.

The cartography of voting centres was almost unchanged since the 2015 elections and was accepted by all stakeholders. The gradual implementation of the residential vote over the last six elections has brought polling centres closer to the voters. It was reported that two-thirds of voting centres were in areas controlled by criminal gangs (*pandillas*), which meant that the TSE had to inform and, in some cases, liaise indirectly with gangs when planning the electoral cartography. In a few cases, security restrictions forced less than perfect choices, such as open-air spaces or commercial malls. The number of voters per polling station was for the first time raised to 600.

In the months preceding the elections the TSE signed dozens of inter-institutional collaborations with ministries, universities, think-tanks and public institutions, such as the National Council of Integral Attention to Persons with Disabilities (CONAIPD), the International Conventions Centre (CIFCO) and the National Police Force. These partnerships are re-negotiated ahead of each election and aim to facilitate TSE tasks in specific areas and are particularly needed given the TSE's limited resources.

## VII. Voter Registration

### A. The Right to Vote

All Salvadoran citizens over the age of 18 have the constitutional political right of suffrage. According to the Constitution, suspension of the right to vote applies to formally sentenced persons, persons officially declared mentally disabled and persons judicially proscribed from voting. The voter registration system is automatic upon receiving the identification document (DUI) from the National Registry of Natural Persons (RNPN). The DUI is a reliable and secure identification document. Central Electoral Registry is mandated to organise, update and purge the voter lists and receives its data directly from the RNPN and other institutions (High Court, Mayor's Offices and General Directorate of Migration).

While the voter registry closed on the 4 September 2017, minors who came to age between 4 September 2017 and 3 March 2018 could make an early request for their DUI and be included in the voter register. An inadequate information campaign is at least partially responsible for the fact that only 4,209 out of 66,105 young voters took advantage of that possibility. To limit changes of residence for electoral purposes only, the Election Law defines a cut-off date of one year before elections. It would be advisable to require citizens to provide an effective and simple proof in order to change their residence and/or renew their DUI.

### B. Voter Registration Procedures



The voter register includes 5,489,603 citizens, with a net increase of 393,568 over the last legislative and municipal elections. However, only 5,186,042 citizens were authorised to vote as no provisions were in place for the more than 300,000 Salvadoreans legally living abroad. Apparently, their voting rights will be secured for the 2021 elections. Similarly, the right to vote for hospitalised citizens and those on remand is *de facto* denied by the lack of mobile voting. Since 2014, police officers on duty on election day are able to cast their vote at the polling station where they are on duty.

While stakeholders generally consider the register quality to be acceptable, it is widely recognised that it still includes a significant number of deceased electors, mostly due to the inadequate information flow between the municipalities and the RNPN, from which the voter register is extracted. A pilot project aimed at computerising the information flow from the municipalities to the voter register is currently underway and, if strengthened and widened, could benefit the quality of the register. The exact number of deceased and out-of-country voters included in the electoral register is unclear and varies according to the source. The General Directorate of Statistics and Census (DIGESTYC) estimates the total number of Salvadorean adults at 4,525,85013. While this number is not exactly comparable to the electoral roll, the difference between the two is 660,192, which gives a good approximation of the inflation of the electoral register.

According to RNPN data, 198,804 citizens had their DUI expiring between 1 January and 4 March 2018, a figure that will increase to around 300,000 when including DUI expired in previous years that have not been renovated yet. The uncertainty about identifying oneself an expired DUI on election day was solved only on 22 January when the President vetoed a National Assembly decree permitting it. Consequently, there was a steep increase in the number of people who renewed their DUI, in many cases with financial help of the political parties. It is estimated that about half of the expired DUIs were renovated before the elections. The renewal cost of USD 10 – one of the highest in Central America – can sometimes be a deterrent, and a reduction of its price, at least for low income citizens, could reduce the occurrence of undue interference by political parties.

## VIII. Registration of Candidates and Political Parties

### A. Registration of Candidates

Registration of candidates officially started on 5 October 2017, the day after the call for elections.<sup>14</sup> Following a complaint by independent candidates in relation to TSE delays in issuing the official forms for signature collection, the Constitutional Chamber extended the registration period by five days to end on 23 December. For the 2018 elections, the TSE relied on the bona fides of candidates' declarations of eligibility requirements and often facilitated the registration of independent candidates through informal procedures to ensure their timely registration.

The TSE registered 1,164 candidates for the Legislative Assembly and 20,145 municipal candidates. Only the PDC candidate list in Usulután Department was rejected after the TSE verified that one disqualified candidate was not replaced in a timely manner. Some 237 women were included as primary candidates on party lists for the Legislative Assembly but not always placed in winnable positions.<sup>15</sup>

<sup>13</sup> <http://www.digestyc.gob.sv/index.php/novedades/avisos/540-el-salvador-estimaciones-y-proyecciones-de-poblacion.html>

<sup>14</sup> Election Law, Article 142. The Constitution, the Election Law and the Special Regulation for the Nomination of Independent Candidates detail the criteria for the registration of candidates.

<sup>15</sup> The law imposes a 30% women quota. See section on Women Representation.



Four independent candidacies out of eleven candidatures were approved for San Salvador District, with no other independent candidates in the country. Independent candidates complained of burdensome and disproportionate requirements, including the high nomination fee and large number of supporting signatures. There is no specific gender quota for independent candidacies, as for example gender alternation between the primary and alternate candidate. Only one independent female candidate stood for election as an alternate for a male candidate.

Following the official launch of the campaign period for municipal elections, on 4 February, there were still nine appeals against candidatures pending a TSE decision. By 7 February 2018, the Departmental Electoral Boards (JEDs) in charge of the registration of municipal candidate lists had received some 15 appeals. This introduced uncertainty regarding candidates and holdups in the printing of ballots for some municipalities. Taking decisions on complaints and appeals against candidatures before the start of the campaign period would lend certainty to the process.

#### B. Registration of Political Parties

The Constitution guarantees freedom of association and the Election Law does not set out excessive or discriminatory requirements for party registration. At least 50,000 support signatures must be provided in support of the application to register a political party.<sup>16</sup> This 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>17</sup> This requirement was not an issue for the 2018 legislative and municipal elections as the ten competing parties all registered prior to 2013.

## IX. The Election Campaign

#### A. The Election Campaign

The TSE and 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 and vote-buying. Most incumbent mayoral candidates did not take unpaid leave, thus mixing office with party politics. Vote-buying in cash or in kind is forbidden under the Penal Code, however, many candidates distributed household and building supplies or basic food staples without being sanctioned.

Several months before the 60-day period for the legislative elections (which started on 3 January) and the 30-day period for the municipal elections (which started on 3 February), electoral campaigning had already taken off throughout the country. Particularly noticeable were the activities of the two main candidates for Mayor of San Salvador, Ernesto Muyschondt (ARENA) and Jackeline Rivera (FMLN), who was the party's last-minute "default candidate" after FMLN had expelled Nayib Bukele, the popular young Mayor of the capital. Pre-campaigning for the 2019 presidential elections, mainly between ARENA's pre-candidates, was widely reflected in the media and to a certain extent eclipsed campaigning for the current elections.

The political maturity of candidates contributed to foster the calmest electoral process since the 1992 Peace Accords: despite political polarisation, relations between candidates were respectful. Although El Salvador holds one of the highest homicide rates in the world, campaigning was remarkably peaceful, and there was hardly any violence, with only isolated minor incidents such as removal or defacement of campaign propaganda and a few scuffles between party militants. In many

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<sup>16</sup> Political Parties Law, Art. 13(b).

<sup>17</sup> Political Parties Law, Art. 19.





departments and municipalities competing parties and candidates signed formal non-aggression pacts, frequently under the auspices of the Salvadoran Human Rights Ombudsperson (PDDH).

The low-key electoral campaign went on across the country without any significant obstacles and was characterised mainly by door-to-door canvassing and small gatherings. Campaigning in traditional media such as newspapers, TV and radio decreased in importance compared to the rise of social media. The decline of voter participation in campaign activities reported by most interlocutors may have been a reflection of discontent with the political offer of the two major parties who had ruled the country for the last 29 years, it may also be attributed in part to Bukele's call to vote invalid or blank as a protest vote. Furthermore, little renovation in the AL could be expected as 67 out of the current 84 Deputies sought re-election.

FMLN candidates campaigned under the party's guidelines and based on its political platform. They did not campaign as individuals. In contrast, candidates from the other parties mostly organised and paid for their own campaigns, presenting themselves individually. FMLN instructed its electorate to vote for the party list without marking preference for individuals, thus reinforcing the party's pre-selection of candidates in its primaries. ARENA, on the other hand, supported all candidates evenly, encouraging voters to mark their preferred candidates.

The main campaign platforms were in relation to security, employment, and the revocation of the Temporary Protection Status (TPS) for around 200,000 Salvadorans living in the USA. Two thirds of Salvadorans have family members in the USA living under TPS, remittances from Salvadorans in the USA constitute 16% of the country's GDP (5 billion USD alone in 2017). Both of ARENA's presidential pre-candidates travelled to the USA to discuss this issue.

Despite an explicit prohibition in the Election Law, many incumbent mayors were observed to use town halls for storing their campaign materials and public servants for campaigning purposes. The most notorious breach was a campaign event involving Ernesto Muyschondt (ARENA mayor candidate for San Salvador) and Guillermo Gallegos (GANA deputy candidate) who were documented by the media when they held a convention attended by several hundred municipal employees during working hours.

Likewise, many candidates and most parties practiced indirect vote-buying by paying the USD 10 fee for renewal of expired national identity cards (DUIs) necessary for voting. In this transaction, citizen's data was recorded to allow posterior verification that they actually voted. The electoral silence period, including on election day, was not respected.

The impact of criminal gangs (*pandillas*) on the electoral process is difficult to quantify. National stakeholders reported that about two thirds of the country's territory is under gang influence. While EU observers did not report that gangs constituted an indirect political weight, the TSE experienced problems delivering letters of assignment to selected polling staff in some neighbourhoods controlled by gangs and had to consider the gang factor when locating voting centres. Accusations of political alliances with gangs are common; the ARENA Mayor of Apopa was in February 2018 sentenced to 12 years in jail for his connections with criminal gangs.

In 2012, the EU recommended moving from a 'winner takes all' to a multiparty system for municipal councils. Election of multiparty municipal councils for the first time in 2015 was a factor that reduced tensions in the campaign by ushering in a cooperative system that better fosters dialogue and negotiation. Among the 46 municipal level alliances for the 2018 polls, twelve bridged the left-right ideological gap as they comprised combinations of the FMLN, GANA and PDC. All parties consulted by the mission considered the interim experience of multiparty councils as very positive. However, the



more established parties were unified in their dislike for cross-voting in the legislative elections, complaining it would cost them ‘fractions of votes.’

#### B. Campaign Finance

There is legal provision for both public and private sources of campaign funding.<sup>18</sup> Public funding, known as *deuda política* (political debt), is in relation to the number of votes the party won in the previous elections. The *deuda política* for these elections was USD 2.82 per vote for legislative and USD 2.11 for municipal elections. Independent candidates, due to a legal lacuna, do not receive *deuda política* and rely exclusively on private contributions. Private funding can come from legal persons, but not from public institutions, state companies, religious institutions, trade unions, foreign political parties or government agencies, or organised crime.<sup>19</sup> The legal framework sets limits to the maximum amount of individual private donations.

The Constitutional Chamber ordered the suspension of public funding until political parties complied in detail with the legal requirement to inform about the origin and spending of campaign funds. This requirement was in line with past EU recommendations to better regulate and audit reporting on income sources and expenditures. The TSE, despite being the legal authority mandated to verify political financing, publicly stated it lacked the human resources to effectively check records. Contrary to the Chamber ruling, the Ministry of Finance distributed USD 7 million to five parties (FMLN, ARENA, GANA, PCN, PDC), declaring it trusted the TSE’s supervisory capacity.

The two main parties had different approaches to private funding. FMLN depended on contributions from party faithful, with activists donating a few dollars a month and party functionaries, including mayors and municipal councillors, allegedly contributed 30% of their salary. ARENA relied mostly on a handful of major private donors. ARENA raised USD 3.8 million, 90% of which was donated by corporate entities. In contrast, FMLN raised only USD 1.4 million, 99.6% of which came from individuals.

Civil society reported to the EU EOM that they were unable to obtain detailed and audited information from contestants regarding the origin and expenditure of campaign budgets. The only solid figure in respect to political financing is the *deuda política*.

#### C. Voter Education

Voter education was minimal during most of the pre-election period. Limited by budget constraints, the TSE chose to focus its outreach efforts on motivating poll workers to join the training and to inform citizens on how to locate their polling station. To such effect, information kiosks were installed in public places and a low-key campaign was launched, mostly through social media and the TSE’s website.

The TSE was assisted by cooperation partners in its voter education efforts. UNDP supported a programme to train JRV members through a virtual classroom that could also be used by ordinary citizens. This included a vote simulator that would signal whether a given vote was valid or not. While the programme was informative and well implemented, it could only benefit the Salvadoreans who had access to Internet, which tended to be a young and urban audience. A *vota-bus* financed by the International Republican Institute (IRI) toured the country for about five weeks prior to the elections providing comprehensive voter information.

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<sup>18</sup> Political Parties Law, Art. 51.

<sup>19</sup> Political Parties Law, Art. 67.



A last-minute release of additional funds by the National Assembly enabled the TSE to print leaflets and model ballot papers and launch a proper civic and voter education programme during the last ten days before the elections. While these late efforts are commendable, they were not sufficient to adequately inform the voters, especially on the complex issue of cross voting.

EU observers in all departments saw no official voter education activities targeted to vulnerable groups or indigenous communities.

## X. Domestic and International Election Observation

As in previous elections, Salvadoran civil society demonstrated its commitment to the electoral process through the organisation of a wide variety of election observation groups. Observers enjoyed an effective freedom to observe and report on the elections without restrictions, even if the access to the final tabulation process was made more difficult by requiring a different accreditation, which was issued in limited number.

More than 1,700 national observers were accredited for these elections. Most observed under umbrella organisations such as Social Initiative for Democracy (550), Fundaungo (500), Salvadorean Foundation for Democracy and Social Development (400), Salvadorean Foundation for Social and Economic Development (285) and EU observers reported seeing domestic observers in 27% of the polling stations visited.

The Human Rights Ombudsperson's Office deployed 1,146 observers to monitor the elections, some of whom were employees, others volunteers. EU observers confirmed their presence in 39% of the polling stations visited. Contrary to previous years, no LGBTI nor indigenous groups observed the elections.

Over 900 international observers were accredited. About half of them observed as part of national observer missions. Others included the European Union (88), Inter-American Union of Electoral Bodies (40), Embassy of the United States of America (29), Organisation of American States (28) and International Republican Institute (14).

## XI. Media and Elections

### A. Media Environment

The media panorama is dense, active and competitive, with a clear dominance in number, audience and circulation of pro-conservative media operators over independent or leftist ones. Main sources of information are television and radio, with online content developing. There are some 40 television channels (15 with national coverage) and some 250 radio stations countrywide, five daily newspapers with national distribution, and dozens of news websites.

State media include *Televisión Nacional de El Salvador* (TVES) and *Radio Nacional de El Salvador* (RNES). Cable operators provide television subscriptions to 55% of homes. Community media is mostly represented through the Association of Participative Media of El Salvador (ARPAS), a network of 22 radio stations scattered across the country, sharing a single FM frequency and one television channel. Social media (Facebook, Twitter, Instagram, WhatsApp) is expanding, with an average 25% of the population having access to internet in urban areas, and 30% in the capital city.

The bulk of media houses are privately owned, and a few radio and television groups dominate the market (TCS, Megavisión, Corporación YSKL, Grupo Samix). A 2016 study from the state's Supervisory



Body for Competition (SC) underscored the fact that TCS group, which operates a total of five television channels with national coverage, was leading the television offer by a huge margin with an average 66% of the audience and 77% of the publicity. The state agency recommended measures to limit possible abuses of dominant positions in the media sector. These measures have not been enforced.

Although the level of violence against journalists and media is less than in other Latin American countries like Mexico or neighbouring Honduras, the main Salvadoran journalist associations (APES and ASPIES) reported that four journalists were killed in El Salvador in 2017 and six in 2016. El Salvador ranks 62 out of 180 countries in the 2017 World Press Freedom Index compiled by Reporters without Borders (RSF). The National Human Rights Commission (PDDH) reported that six cases of violence or threats against journalists were under investigations: one in relation to murder by *pandilleros* of a community media worker in 2016, one for *pandillero* threats against a journalist, and three for police threats against journalists.

In 2006 El Salvador adopted a protection programme for victims and witnesses which was also accessible to journalists, but critics point out serious security breaches related to its implementation. A number of media actors also advocate for the creation of a specialised prosecutor for crimes against journalists, which could enhance the fight against prevailing impunity. Local journalist and civil society organisations are currently involved with the Human Rights Ombudsperson's Office in the preparation of a draft law on protection of journalists and human rights defenders. Such a law could also include issues related to social and gender protection within the media.

During the electoral campaign, the media mostly benefited from freedom of expression, and no significant acts of violence against journalists were reported. Yet, pressure on media or journalists persisted overall and perpetuated the effect of self-censorship and limitation on investigative journalism. One serious case of alleged intimidation was reported by *La Voz de mi Gente*, an indigenous community radio station, which was threatened on 15 February with a defamation lawsuit by the ARENA Mayor of Tacuba (Ahuachapán). The radio lodged a complaint on 22 February before the Ombudsperson's Office in relation to infringement of freedom of expression. The case is under investigation.

On election day and the day prior to elections, a total of 25 cases of obstruction of the media were reported by an independent monitoring system operated by APES. Most cases referred to journalists who were not allowed in voting centres. Two cases were in relation to alleged threats made by mayoral candidates against journalists.

Canal 29 (Gentevé), the main private television channel supporting FMLN, claimed to be under judiciary pressure during the electoral campaign and following a December 2017 decision to place the channel under management of the National Council for Properties Administration (CONAB). The decision was taken in reference to a money laundering case. The Attorney General's Office confirmed it investigated the channel. Canal 29 denied the charges and claimed to have provided sufficient evidence. Three other media houses, described as pro-conservative, were also placed under CONAB administration for similar reasons. CONAB reported it did not interfere in the editorial line of the media it administrates.

Canal 29 also complained of restricted access to cable platforms, supposedly depriving the channel from a sizeable share of audience (55% of homes enjoy cable television), despite a legal obligation for cable service companies to distribute a wider television offer. The 2016 Law on Telecommunications stipulates that cable operators have an obligation to include in their subscription packages all



television channels operating with free access and national coverage, which is the case of Canal 29. Cable operators invoke a lack of technical capacity. Canal 29 appealed to the media regulatory body, the National Bureau of Electricity and Telecommunications (SIGET), which initiated a mediation, but had not taken significant enforcing measures during the electoral campaign period.

SIGET, the media regulatory body, was weakened by a January 2018 Constitutional Chamber decision to cancel the election of one of its three board directors, on suspicions of conflict of interest and his biased election. The case seems to be emblematic of the struggle between political lobbies within state bodies, especially when high business interests like telecommunications are involved. This partly explains SIGET's alleged passivity in relation to enforcing legal provisions like attributing additional radio and television frequencies to community media and alternative private media or regulating the quasi-monopolistic situation of a number of private media actors.

#### B. Legal Framework for the Media

The Constitution safeguards freedom of expression and information and prohibits prior censorship. There is no dedicated Press Law in El Salvador regulating media content in terms of equity and pluralism. This is partly due to the alleged reluctance of conservative private media which favour ethical self-regulation over legal obligations. A 2013 draft Law on Public Media was unsuccessful. In practice this leaves the public media at the discretionary power of the government.

Since the partial decriminalisation of insult, slander and defamation in 2011, the Criminal Code (Arts. 177-180) provides for fines instead of jail sentences for journalists recognised as guilty of these offences but still imposes professional suspension of up to two years. The Criminal Code (Art. 338) also includes imprisonment of up to three years for media directors and journalists who refuse to publish a right of reply or rectification. Although these legal dispositions have not been enforced recently, they nevertheless might be considered as undue restrictions to freedom of expression, contrary to regional commitments.

The Telecommunications Law was reformed in 2016. It now includes provisions that may limit media concentration, and for the first time it officially recognised community media. However, these dispositions have not been enforced, allegedly due to private sector obstruction. The licenses of major radio and television channels, which were due to expire in 2017/2018, were mostly renewed by SIGET, whereas community media still share a single FM radio frequency. In line with regional standards, SIGET could have used the reform to reallocate frequencies under specific conditions.

Election related media content is mainly regulated by the Election Law and the Political Parties Law (2013), which do not provide for equity or equality in the news or paid political advertising in private media during the campaign period. Nevertheless, regulations require the national public radio and television (RNES, TVES) to provide free airtime during the last five days of the campaign period to all political parties, based on an equity system. These dispositions have been enforced, as assessed by EOM media monitoring, although political parties were notified with undue delay by the TSE, with the effect of opposition political parties (ARENA, GANA, PCN and PDC) being deprived of their free airtime slots on 22 February.

Further regulation could extend the duration of these public media dispositions to an earlier and longer part of the election campaign period. It would also be consistent to include independent candidates in the allocation of free airtime. It would be advisable to involve the private media, which enjoy major audience ratings, through a specific covenant to be elaborated by the relevant actors including the TSE.



Institutional advertising promoting public works, although restricted during the campaign period, was extensively broadcast by the government on public radio and television. This advertising mainly bore the logos of the President of the Republic, the Ministry of Public Works and the Vice-Ministry of Transportation. A total of 227 public works spots, mostly related to recent road infrastructures, were broadcast mostly in the public media between 5 February and 4 March. No action was taken by the TSE.

Broadcasting by the private media of institutional advertising promoting government achievements in other sectors than public works, which is not restricted as such during the election campaign period, also raised questions about media independence. A total of 104 spots bearing the logo of the Ministry of Health were broadcast by private radio and television channels between 5 February and 4 March, 46 of them by pro-FMLN media, and 58 by more conservative media. The issue of institutional advertising attribution to private media paid by the government, both during and outside of election periods, might be addressed in the law in order to limit government influence on the media and to develop related equity and transparency mechanisms.

In relation to political advertising in private media, the Election Law requires media outlets to provide the TSE with an official list of publicity rates to be applied during the election campaign period, an obligation to which only a few media houses complied. A couple of major media radio and television channels also admitted that they offered discounts to some political parties or candidates based on the number of ads contracted or anticipated payment modalities, which is unlawful.

During the campaign silence period (1 to 4 March), significant violations were observed on private media. Whereas the law does not explicitly prevent candidates and political parties from expressing themselves during that period, one limitation clarified by TSE is that they have to refrain from directly soliciting the vote, which some of them actually did, as directly observed by the EOM media monitoring. On election day, the ARENA San Salvador mayoral candidate and three ARENA parliamentary candidates for San Salvador directly solicited the vote on a major national private television channel, whereas the FMLN Secretary General did the same on a pro-FMLN radio with a more restricted audience.

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

Freedom of expression, as enshrined in the Constitution, was respected during the election campaign period. Pluralism was nevertheless somehow restricted as the media focussed mostly on the two main political actors, ARENA and FMLN, and other political parties and candidates received less coverage. The campaign, highly visible in the public and private media with national coverage, offered a great variety of interviews and debates both at legislative and municipal levels, focusing on high stake constituencies. Although the tone of the campaign was often heated and sometimes injurious, there were no reported cases of hatred nor inflammatory speech. A unique debate with the leaders of the main parties or their representatives took place on 18 February on a private television channel. The campaign was also quite active in local media, where political bias was sometimes observed, like in the City of San Miguel where the two main municipal candidates, from FMLN and GANA, both enjoyed the support of their respective television channel.

According to EU EOM media monitoring (see Annex B) findings focussing on peak hours from 5 to 28 February,<sup>20</sup> on major private television channels (Canal 6, Canal 19) which yield the main influencing

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<sup>20</sup> From 5 to 28 February, the EOM conducted a qualitative and quantitative monitoring of four television channels – public: *Televisión Nacional de El Salvador* (TVES/Canal 10); private: Canal 6; Canal 19; Canal 29 (*GenteVé*); three radio stations -



capacity in term of audience, FMLN (50%) and ARENA (33%) had the bulk of paid advertising, well ahead of GANA (7%) and other political parties (10%). According to credible sources, ARENA spent at least USD 4 million in political propaganda in the media during the election period at national level, without considering the costs at candidates' level, and FMLN probably spent comparably considering its predominance in commercial television ads, whereas other political parties' spending was comparatively far lower. These data advocate for the establishment of dedicated spending ceilings or volume quotas for political parties, in line with the international principle for a level playing field, a recommendation supported by the TSE President.<sup>21</sup>

In the news and other editorial programmes including interviews and debates broadcast on major private television channels, ARENA (31%) and FMLN (30%) held sizeable shares, with GANA (12%) well behind, the tone being mostly positive for ARENA (30%) and FMLN (22%), or neutral, as assessed by the EOM media monitoring. In state media, although the government mostly dominated the news on Radio Nacional, a more balanced coverage was noticed on Televisión Nacional, mainly through a dedicated debate programme broadcast throughout the campaign period aiming to present a plurality of political parties.

No formal complaints from political parties or candidates in relation to media access were lodged at the TSE. FMLN nevertheless criticised the majority of private media for featuring conservative editorial lines hostile to the government. On the contrary, ARENA denounced a lack of access to state television, and GANA complained of a lack of access to state radio. Nevertheless, state media mostly complied with their obligation to offer political parties free airtime based on equity, albeit with undue delays. (See section B. Legal framework in the Media).

Social media networks (Facebook, Twitter, WhatsApp) were widely used by political parties and candidates to promote their programmes and publicise campaign events. No online hate speech or related complaints were registered, however defamatory accusations between contenders were observed on several occasions. A complaint for presumed social media defamation was lodged on 23 February at the Municipal Electoral Board against the GANA mayoral candidate in Ilobasco. Several cases of online sexist harassment against female candidates were reported, regardless of political parties' affiliation. For instance, the FMLN female mayoral candidate in Ahuachapán suffered from a discrediting campaign allegedly staging her in a porn video. The ARENA female mayoral candidate in Santa Ana, 69 years old, said she was the target of orchestrated trolls (fake accounts) on Facebook. Social media were also used on some occasions to unlawfully publicise gifts offered to voters, as did Ernesto Muyschondt, the ARENA mayoral candidate in San Salvador, on his official Twitter account on 21 February.<sup>22</sup>

#### D. TSE and the Media

A total of 2,630 journalists, among them only 14 journalists working for international media, were accredited by the TSE to cover the election process, mostly on election day. The TSE said to have spent USD 1,142,000 in voter education in the media, 70% of it on radio and television.

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public: *Radio Nacional de El Salvador* (RNES); private: *Radio Maya Visión*; *Radio YSKL*; three daily newspapers - private: *Diario Co Latino*; *El Diario de Hoy*; *La Prensa Gráfica*.

<sup>21</sup> In a tweet published on 20 March on the TSE account, the TSE President stated that he recommended to regulate political publicity in the media, in order to limit the influence of wealthy candidates and political parties.

<sup>22</sup> ARENA candidate for the mayorship of San Salvador, Ernesto Muyschondt, tweeted on 21 February that his team provided dozens of families in District 2 with corrugated metal sheets (generally used for roofing purposes).



## XII. Political Participation of Women

In El Salvador women represent 53% of the electorate but remain underrepresented in public life. Civil society organisations conclude that structural obstacles endure as many women are constrained by traditional patriarchal roles, persistent discrimination and lack of financial support to seek public office. 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>23</sup>

The Constitution enshrines the principle of equality and prohibits gender-based discrimination. Two special laws for the protection of women were approved in 2011.<sup>24</sup> While socialisation of these laws remains low, their transversal implementation is developing. In 2017, special courts to process cases of violations against women were installed.

The current law does not impose parity and alternation on candidate lists, even though El Salvador committed to reach parity representation and to ensure substantive equality in all decision-making spheres. Political parties must comply with a 30% quota for women candidates, regardless of whether they are placed in primary or alternate positions. This does not contribute to effectively increase women's participation. The majority of political parties' internal statutes do not aim at parity in the composition of candidate lists or party structures. None of the ten competing parties was led by a woman. Only FMLN surpassed the legal quota in its statutes for women, stipulating 35%. Women only stand chances to be elected if positioned as primary candidates.<sup>25</sup>

Some 237 women stood as primary candidates and 316 as alternate candidates for the AL. A total of 8,649 women ran for Municipal Councils. The new Legislative Assembly elected 26 women (30%), one less than in the previous legislature, while the number of mayors elected remained low with only 28 (11%). (See Annex C).

Some parties made an effort to achieve close to parity on their lists for primary positions: FPS with the highest number included 39 women out of 84 candidates (46%); GANA presented 45% (38 women), FMLN with 42% (36 women candidates); PCN with 40% (34 women) and ARENA with 32% (27 women). The remaining parties – PSD, PDC and CD – did not achieve 30% representation of women in their primary lists.

The Political Parties Law obliges parties to establish in their statutes procedures to promote women to decision-making positions. This could be achieved by introducing affirmative actions and financing programmes for the political empowerment of women.

Despite advances promoted by the TSE Gender Unit, women remain underrepresented in the electoral administration, especially in the Departmental Electoral Boards.

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<sup>23</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

<sup>24</sup> The Special Comprehensive Law for a Violence-Free Life for Women and the Law of Equality, Equity and Elimination of Discrimination Against Women.

<sup>25</sup> All political parties but FPS presented more women in alternate positions than as primary candidates. The party with the highest number of women in alternate positions was ARENA with 55 candidates while only 27 were included in the primary list.





### XIII. Political Participation of Persons with Disabilities

According to a 2015 National Survey,<sup>26</sup> 343,000 Salvadorean adults (410,000 including minors) bear a physical, sensorial or intellectual disability. The National Register of Natural Persons records 270,000. As in previous elections, the TSE signed a cooperation agreement with the National Council for Persons with Disabilities (CONAIPD) with the objective of acting jointly to guarantee political rights. A direct dependency of the Presidency of the Republic of Salvador, CONAIPD provided expertise to implement several actions funded by the TSE, including employment of 15 trainers with disabilities and updating of the inter-institutional *2018 Guide to Guarantee the Vote of Persons with Disability*.

Physical access for the mobility impaired to all public buildings, including the schools that were used as voting centres is guaranteed<sup>27</sup> by the state. In practice the TSE ensured punctual installation of provisional wooden ramps. EU observers reported that polling stations were accessible for people with reduced mobility in 77% of observed polling stations.

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. However, this option was not easily adapted to the complexity of preferential and cross voting. Only one or two Braille envelopes were available at each voting centre and, as reported to the EU EOM by potential users, the polling staff was sometimes unaware of their existence.

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 the Human Rights Ombudsperson's Office and CONAIPD. The law would provide much needed autonomy and power to CONAIPD and would better guarantee the employment in state institutions for persons with disabilities.

Persons with disabilities have been eligible to run for municipal councils since 2011. The two legislative candidates with disabilities in the Department of San Salvador – one man running with ARENA, and one woman with PCN – were both elected. Notwithstanding, political parties did not use specific strategies to pursue the vote of persons with disabilities nor did they pay too much attention to this issue in their political programmes.

### XIV. Political Participation of the LGBTI Community

Protection of the LGBTI community's right to vote and to be elected has received growing attention from state institutions and the TSE. Four representatives of the LGBTI community, including two transgender women, were included in the recruitment plan for TSE trainers. 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.

TSE's efforts in this area brought some real achievements, as LGBTI organisations reported only very few cases of discrimination by polling staff against transsexual and transgender voters on election day.

<sup>26</sup> <http://www.conaipd.gob.sv/wp-content/uploads/2017/09/Encuesta-CONAIPD-primera-entrega.pdf>

<sup>27</sup> Norma Técnica Salvadoreña NTS 11.69.01:14 Accesibilidad al medio físico. Urbanismo y Arquitectura. Requisitos.



Whenever this occurred, the intervention of other JRV members ensured protection of the right to vote.

While no candidate openly identified himself or herself as gay or lesbian, one PSD candidate in the Municipality of San Salvador was a transgender man. While he was not elected, the Federation of LGBTI organisations welcomed his candidature as an event of paramount importance. The LGBTI organisations reported they were getting ready for a greater participation in future elections, including by developing a thematic platform that could be offered to political parties. A training programme to build political capacities of LGBTI persons is currently under study with the support of NDI and USAID.

Notwithstanding 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. Such discrepancies constitute an offense to human dignity and an obstacle to their full participation in the political and social life of the country. Campaigning with a name that does not reflect a person's gender makes such activity very difficult.

Positive steps have been taken in recent years, by both the executive and the legislative powers 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, members of the LGBTI community are still disproportionately victims of hate crimes and homicides. According to the NGO COMCAVIS Trans, more than 600 lesbian, gay, bisexual and/or transgender persons were murdered since 1993, with 42 murders in 2014, 37 murders in 2015, and 41 murders in 2016.<sup>28</sup> While a sentence of the Supreme Court in April 2017 recognised a transgender woman's right to add an additional name in her identity document, the approval of a more 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.<sup>29</sup> A bill on Gender Identity was introduced by the FMLN before the National Assembly on 22 March 2018.

## XV. Political Participation of Indigenous Citizens

Indigenous communities are present in six of the country's 14 departments (Pipil communities in the departments of Ahuachapán, Sonsonate, La Libertad, San Salvador and La Paz, and a few Lenca and Cacaopera communities in Morazán), and indigenous citizens account for ten percent of the overall population.<sup>30</sup> Nevertheless, political parties were not observed to pursue specific strategies to obtain their vote. Apart from a couple of exceptions at the municipal level, no indigenous candidate as such was presented by any political party.

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<sup>28</sup> "Uninformed Injustice: State Violence against LGBTI people in El Salvador", Georgetown Law Human Rights Institute Fact-Finding Project, April 21, 2017.

<sup>29</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>30</sup> According to the report El Salvador presented to the UN Human Rights Committee in 2002: Informe CCPR/C/SLV/2002/3, p. 173.



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

## XVI. Electoral Disputes

### A. Overview of Disputes

The TSE is the supreme electoral authority and holds both administrative and jurisdictional competencies in the handling of electoral petitions and appeals. In its administrative role, the TSE may initiate investigations into violations of the Election Law *ex officio* or by means of an official complaint. According to the Election Law, the TSE is the only appellate instance to review its own decisions. In practice, a final instance of review limited to cases of violation of constitutional rights is offered by the Supreme Court of Justice.

The TSE is mandated to administer election petitions for the nullification of elections and final results within clear expeditious deadlines and following legal criteria by qualified majority of TSE magistrates. 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 the case of a petition for the annulment of final results. A defendant’s arguments are heard as is the Attorney General and the Electoral Prosecutor. TSE decisions are final.

As for the review of lower election management bodies’ administrative decisions, these can be appealed from JEMs to JEDs and to the TSE following its internal hierarchy. There is no deadline for decision taking.

EU observers confirmed a low number of electoral disputes prior to election day. Official complaints at the JEDs originated from the violation of rules concerning early campaigning in almost all departments. Complaints against the use of state resources were registered in San Vicente. From the Municipality of Armenia (Sonsonate) a formal complaint was filed at the TSE by GANA and FMLN requesting the removal of JED members due to their partiality in decision-making. The case was dismissed by the TSE.

The 14 JEDs took different approaches to dealing with complaints and appeals. Some JEDs felt technically unprepared to implement the Election Law and forwarded petitions and appeals to the TSE for adjudication, in other cases the JEDs solved several disputes through mediation and only a few cases required a formal JED decision. EU observers reported that several complaints remained pending at JEDs. Apparently, complaints were not advancing efficiently due to various reasons, including a lack of human resources, lack of knowledge of the law to take timely decisions or political interference by JED members.

According to the TSE, political party internal elections originated some 40 petitions. The EU observed in the Municipality of Jiquilisco (Usulután) that the TSE decided against an ARENA female candidate who complained the party disrespected the outcome of the internal elections. The TSE adjudicated these petitions mostly in a manner and based on the legal documentation delivered by parties.



The TSE registered some 63 cases of breach of campaign rules. Out of the 63 initiated processes, 48 cases were pending at the time of writing while in five cases the TSE sanctioned infractions. These comprised the very few punished election breaches by the TSE relating to the 2018 elections. The two most relevant infractions involve two ARENA pre-candidates for the 2019 presidential elections who were sanctioned with fines of USD 1,750 and USD 3,500. The company contracted to transmit the TV spots was equally fined with USD 1,750. The three other cases referred to candidates – two from ARENA and one from GANA – who used outdoor banners before the legal start of the campaign. The electoral administration authority acted accordingly and requested candidates to remove the banners.

The TSE informed the EOM of its intention to adjudicate after the elections the remaining pending cases of alleged violation of campaign rules. Despite the fact that all sanctioned cases were initiated *ex officio* by the TSE, the election management body is challenged to investigate and sanction infractions in a timely and effective manner due to its limited human and financial resources. The TSE left more evident electoral infractions unsanctioned. Electoral infractions in social media lack effective supervision by the TSE and can only be sanctioned if denounced.

Only a small percentage of electoral infractions were detected by the TSE and the financial penalties applied were not discouraging. Past EU missions recommended the setting up of a more efficient and dissuasive system of sanctions for cases of violation of electoral legislation.

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

Investigations by the Electoral Prosecutor's Office of alleged pre-election day frauds are on-going but seem of lesser importance when compared with the urgency of criminal investigation efforts. Limited information on ongoing investigations was made available to the EOM. In the Municipality of Chalchuapa (Santa Ana), PCN claimed that GANA violated the Political Party Law by not holding internal elections for its mayor candidate. As both the JED and the TSE ruled against the petitioner, claiming lack of proof, the case was brought before the Electoral Prosecutor. In another case, the TSE requested the Attorney General to verify the authenticity of 358 ballots in San Vicente, which were all deemed genuine following a prompt inspection.

#### C. Petitions to the Constitutional Chamber of the Supreme Court of Justice (CSJ)

On 21 February, the Constitutional Chamber received an appeal presented by the incumbent ARENA mayor and candidate in the Municipality of San Alejo. His candidacy for the Municipal Council had previously been rejected at first and second instance by the TSE due to a previous penal conviction.

Two additional appeals were filed at the Chamber on 21 February. In one case, the registration of the Vice-Minister of Foreign Investment as an FMLN candidate for the Legislative Assembly was challenged by the citizen organisation Clean Democracy. Article 127 of the Constitution prohibits vice-ministers to stand as candidates if they are in exercise of that position during the three-month period prior to elections. Such candidates are obliged to renounce. The TSE allowed the candidature for the Department of San Salvador by accepting a presidential letter that authorised the candidate to suspend his functions.

In another case PCN candidates to the AL filed an appeal requesting the Chamber to evaluate if the president's veto against allowing voters with expired DUIs to vote on election day was unconstitutional. According to the National Registry of Natural Persons, some 100,000 voters could have been affected.



While there is no legal deadline for the Chamber to decide on constitutional petitions, the Chamber magistrates indicated they would be cautious in issuing decisions that could impact the election process. Cases mentioned were still pending a decision at the time of writing.

## XVII. Polling, Counting and Tabulation of Results

### A. Overview of Voting

The EU EOM's 88 observers visited 365 polling stations (JRVs) throughout the day in the country's 14 departments. Opening procedures were observed in 36 of these polling stations and counting in 31 polling stations. Observers submitted 31 reports on the transmission of results from polling centres across the country. The EU EOM consolidated information from 395 observation reports.

Election day was calm and generally well-organised. The opening was rated positively by 94% of the observers, even though two thirds of observed polling stations opened with a delay of 15 to 90 minutes due to organisational shortcomings. All JRVs were established with at least three members, as prescribed by law, which constituted a notable achievement given doubts that persisted up until election day. Only 55% of JRVs were constituted by all five members. In some cases, trained citizen poll workers who had been appointed through a lottery system presented themselves for duty but were turned away as the TSE gave preference to political party nominees. This constituted an unjustified disparity of treatment and contradicted recent efforts in favour of the citizenisation of the electoral administration.

EU observers assessed the overall conduct of polling operations as "very good" or "good" in 97% of observed JRVs. The secrecy of the vote and voting procedures were respected in the large majority of cases. Electoral material was missing in 8% of the polling stations but in no case was this observed to prevent the possibility to vote. Some observers reported occasional disparity of treatment since polling staff lacked proper information about the precise validity of national identity cards (DUI), especially when the original expiry date was between 4 March and 14 April 2015.

The presence of party agents contributed to the transparency of the process: ARENA and FMLN were represented in almost all of the polling stations observed, while GANA and PCN party agents were present in 77% and 70% of them, respectively. All other parties were present to a much lesser extent. However, the presence of more than one party agent per JRV was reported in 17% of observed JRVs, and the undue interference of party agents in the process was noted in 7% of observed JRVs. The excessive presence of 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.

In the polling stations observed by the EOM, women comprised 51% of JRV presidents and 59% of other JRV positions. Over 75% of observed polling stations were accessible to persons with disabilities. All observed polling stations closed on time.

### B. Counting

Counting at the 31 observed polling stations was conducted in a transparent manner and in the presence of party agents. The overall assessment of the counting process of the municipal elections was positive for all the observed polling stations. In contrast, one third of the observers assessed the counting process of the legislative elections as deficient, as poll workers struggled with the complexity of the preferential and cross-voting system and to properly fill in the results protocols. These



difficulties resulted in a deficient tabulation of the preferential and cross-votes, which negatively impacted the quality of both preliminary and final tabulation.

These difficulties had been highlighted well in advance by different stakeholders, including the TSE itself which recognised the need to solve errors in results protocols before transmitting these to the National Tally Centre. A Request for Proposals was published through the public tendering system (BOLPROS) for the provision of an electronic tool to assist polling station staff in the counting process.<sup>31</sup> However, this tendering process did not attract any contender as it was not financially attractive.

### C. Transmission and Publication of Preliminary Results

The system put in place by the TSE to electronically transmit, tabulate and publish preliminary election results was successful, allowing stakeholders to view results online as they were processed. The principal weakness was the high incidence of mathematical inconsistencies and other irregularities found in the results protocols, which had the effect of prolonging the process and delaying announcement of final results.

The TSE implemented a system for quickly providing the public with preliminary results by using scanners, donated by the Association of World Election Bodies (A-WEB), at each polling centre to electronically transmit copies of the polling station results protocols to the national tally centre. The data from the results protocols was then manually entered into two parallel and independent data bases. One of the data bases was organised by the publicly-contracted company SMARTMATIC, which was responsible for the publication of preliminary results on the internet. The other was run jointly by the TSE and A-WEB, for internal TSE use only and with planning for the 2019 presidential elections in mind.

The transmission system was tested on a number of occasions in the weeks prior to the polls, including a nationwide simulation two weeks ahead of election day. During this simulation, only half of the total results protocols were successfully transmitted, due to logistical, communication and technical shortcomings. Not all aspects of the process were tested, in particular filling in of results protocols by polling staff, checking for possible complications due to inconsistent or incomplete filling-in of protocols, and calculation of seat allocation and preferential voting. Nonetheless, the TSE worked together with SMARTMATIC and A-WEB to resolve the issues which arose, and the tests helped the TSE to avoid the problems seen in results transmission in the 2015 elections.

EU observers assessed the electronic transmission of results as “good” or “very good” in 97% of observed polling centres. Where there was no network coverage for electronic transmission, results were saved to USB devices and physically transferred to an alternate location. The transparency of the process was significantly enhanced by the TSE publishing online the data from the results protocols as well as copies of the original protocols. Political parties and other stakeholders could then compare the online publication against the copies of the results protocols they received at the closing of polls.

On the evening after election day, by which time 85% of protocols had been published online, the TSE publicly announced that an error had been found in a programming script used by SMARTMATIC to determine the results of preferential voting and ranking within party lists. The error only affected departments with ten or more seats (San Salvador and La Libertad) and did not affect a party’s overall allocation of seats. Although the transparency of the results transmission system allowed the error to

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<sup>31</sup> BOLPROS – Oferta de compra n° 123 – 25/08/2017 (<https://bolpros.com/download/boletin-de-oferta-n-123-2/>)



be spotted and corrected quickly, the incident cast some doubt over the credibility of the preliminary results tabulation process.

The principal weakness observed by the EU EOM in the transmission and tabulation of preliminary results was the high incidence of mathematical inconsistencies and other irregularities found in the results protocols. Analysis of the 9,422 preliminary JRV results revealed that 58% presented mathematical inconsistencies,<sup>32</sup> although in some cases these inconsistencies could be attributed to decisions taken at the data entry centre.

Within 48 hours of the closing of polls, preliminary results processing stagnated at 88%, with the outstanding 12% representing results that had not been transmitted or irregular protocols that could not be processed. Under pressure from the media, political parties and public opinion, the TSE declared the preliminary results tabulation closed and invited stakeholders to focus on final results tabulation.

#### D. Tabulation of Final Results

The Election Law provides that final results tabulation based on original protocols must begin within 48 hours from the closing of polls, and should have therefore started by 6 March at 17:00. Due to organisational shortcomings, the process only began by the afternoon of the following day. While there is no legal deadline within which to complete final results tabulation, the law states that it should be completed as soon as possible. Initially planned to be finished within five days, the process was unnecessarily prolonged to 16 days, at which time the results of one polling station in San Vicente were still pending.

The whole process was conducted by TSE staff, organised into 65 work stations, with the active participation of representatives from political parties, the Public Prosecutor's Office, the Electoral Supervisory Board (JVE) and the Human Rights Ombudsperson's Office. A digital display installed at each work station allowed all participants to clearly see the data entered by TSE employees and compare it with their copies of original results protocols. The Election Law does not include detailed provisions on the way to conduct the final tabulation. To help direct the process, the TSE produced *ad hoc* guidelines just prior to election day. The guidelines were neither comprehensive nor clear and were disputed by both JVE and political party representatives, most of whom discovered them for the first time as tabulation began.

From the start of the process, several apparent violations of the Election Law took place. Even though its article 214 clearly states that the only basis for the final tabulation are the original protocols – something the magistrates stressed each time someone put in doubt the work of Smartmatic – the preliminary legislative results were pre-loaded in the final results system. Additionally, even though the presence of the JED is mandated by the law, the guidelines did not foresee the inclusion of its members among participants in the work stations, thus depriving them of almost any influence over the process. Also, contrary to TSE guidelines, tabulation software did not automatically flag results protocols that contained mathematical inconsistencies.

As irregular protocols were received by work stations, the lack of clear instructions quickly became evident. Faced with mathematical discrepancies, work station members had differing opinions regarding the competent authority to solve irregularities. It was unclear if these were to be solved by TSE magistrates, TSE employees or work station members (including political party representatives).

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<sup>32</sup> EU EOM analysis of all 9,422 preliminary JRV results revealed that 57.9% had some level of mathematical inconsistency: 3,340 (38.4%) had mathematical inconsistency greater than three votes; 2,382 (27.4%) more than 10 votes; and 1,745 (20.1%) more than 20 votes.



It was also unclear whether work station decisions were to be taken by majority or by consensus. Continuous disagreements on how to proceed caused lengthy discussions, occasional tensions and the temporary withdrawal from the process of FMLN and GANA representatives. After some negotiations, procedures started to be agreed upon and the process slowly resumed, although with highly inconsistent decision-making between different work stations.

The poor data quality due to mathematical inconsistencies of legislative protocols did not facilitate tabulation. In contrast few municipal protocols contained such inconsistencies. In most cases, JRV members had: mixed preferential votes with cross-voting; made identical multiple entries to both a coalition and the member parties of the coalition; confused spoiled, unused and missing ballots; misreported preferences given to legislative candidates. Following a TSE instruction that work stations should only make “small corrections” (no specific guidelines provided), 20% of all legislative protocols were transferred to the TSE magistrates for further review.

Saturated with almost 2,000 protocols, the TSE magistrates took several days to divide them into categories and send them back to work stations for processing. Instead of being defined by the magnitude or the type of irregularity encountered, irregular protocols were categorised based on whether or not preliminary results in the corresponding electoral district were tight. If results were tight, the magistrates would have a closer look at the issue and try to solve it. If results were not tight, work stations were advised to “fix” the number of unused ballots or simply put all data to zero. Inconsistencies in registration of candidate preferences were never considered a relevant issue and were largely ignored, in an apparent disregard of voters’ choices.

Based on whether or not preliminary results in an electoral district were tight, and despite the lack of a corresponding legal provision, the TSE decided by a qualified majority (4-1) to order the recount of all legislative ballots in the Department of San Vicente and in the Municipality of El Congo. While the latter recount, determined by the accidental omission of a party from the protocol, had the agreement of most parties, the recount of San Vicente was decided on a simple request by one political party, without any legal basis to support it, and was contested by other political forces. Similar requests for recounts in other departments (La Unión, Morazán, Sonsonate) were ignored.

In accordance with the Election Law, the TSE also decided to verify all challenged ballots in the Municipality of Zacatecoluca, since their number was higher than the vote difference between the two leading candidates. While the verification did not change the provisional winner, some TSE split decisions on the validity of the votes showed, once again, a TSE divided along partisan lines. Moreover, some of the decisions did not seem in line with validity criteria set in the election law, as marks outside of the party’s box were considered valid under the understanding they were close enough. Such understanding revealed decisions based on political rather than technical criteria.

After more than two weeks the tabulation process was declared concluded, even though San Vicente seats could not yet be attributed. The re-opening of San Vicente ballot boxes had in fact brought about a new problem, as one of the ballot boxes was found to be empty. Since the inclusion of this San Vicente protocol in the final results will change the allocation of one seat, the TSE decided to close the tabulation while awaiting an investigation by the Attorney General’s Office.

While in the end the stakeholders seemed to accept the outcome of the tabulation, the process could have been much shorter and fairer if the TSE had provided clear guidelines, acted in accordance with the Election Law and been more authoritative in imposing instead of entering into negotiations with the parties to overcome its own shortcomings.





## XVIII. Results and Post-Election Environment

### A. Publication of Results

Preliminary results were published in real time by the TSE and were accompanied by the scanned images of original results protocols. This publication constituted an important element of transparency and allowed one important mistake in the software to be spotted and corrected.

Online publication of final results, on the contrary, started only five days after the beginning of the tabulation and the percentage of results published never corresponded to the real advancement of the process. Considering that domestic observers had limited access to the tabulation area and that media presence was restricted to short periods, the overall tabulation process lacked some important transparency measures.

#### Final Results

Political Party/Coalition	Number of <i>Asamblea Legislativa</i> Seats	Valid Votes	Percentage of Votes
Alianza Republicana Nacionalista (ARENA)	35	854,651	40.23
Frente Farabundo Martí para la Liberación Nacional (FMLN)	18	437,760	20.61
Gran Alianza para la Unidad Nacional	10	243,268	11.45
Partido de Concertación Nacional	8	221,802	10.44
Partido Demócrata Cristiano	2	60,016	2.82
Cambio Democrático	1	19,591	0.92
Fraternidad Patriota Salvadoreña	0	20,026	0.94
PSD	0	15,231	0.72
Independent Candidates	1	14,546	0.68
Coalition PDC-PCN	1	31,316	1.47
Coalition ARENA-PCN	3	74,717	3.52
Coalition FMLN-PSD-CD	1	33,937	1.60
Coalition FMLN-PSD	1	32,641	1.54
Coalition FMLN-CD	3	65,027	3.06

### B. Complaints Relating to the Election Results

Cases mentioned in this report refer to official complaints presented by parties after election day and during the final tabulation of results.

The EOM registered a low number of official complaints in relation to election results. Political parties, coalitions, independent candidates and citizens with legitimate grounds are legitimised to file



complaints. After election day, the only petition for the annulment of a polling station result was presented by PDC in the Municipality of San Miguel Tepezontes (La Paz). FMLN complained about obstruction to vote by some polling station members.

The TSE accepted a petition for the annulment of the municipal election in the Department of San Miguel presented by the GANA candidate based on several alleged irregularities, including used ballot papers which were found in the voting centre after election day and a video revealing inappropriate behaviour of one poll worker. The case was dismissed by the TSE allegedly because the difference between the two most voted contenders was too wide to be affected by the irregularities.

Several petitions from different political parties were presents to the TSE Magistrates during the final aggregation process in San Salvador requesting the review of results protocols and opening of election boxes. In line with legal provision,<sup>33</sup> the TSE decided to review challenged ballots in Zacateculoca (La Paz). In the Municipality of El Congo (Santa Ana) the denomination of the PSD party name was missing from the ballot paper. The TSE accepted the petition, reviewed 41 ballot boxes and assigned the votes accordingly.

The most notorious case was the TSE order to conduct a recount of ballots for the legislative election in the Department of San Vicente. The Election Law does not foresee recounts based on inconsistencies of results protocols. Parties claimed that other departments should equally be recounted on the same grounds and complained unofficially about the apparently arbitrary TSE decision.

Following the 2015 election, the Constitutional Chamber ordered the recount of ballots for the Department of San Salvador based on inconsistencies in results protocols. Seemingly the TSE based its decision for San Vicente on the 2015 jurisprudence. Parties have the possibility to present a legal recourse after the announcement of final results. The EOM was not in a position to assess the legal grounds of the post-election day TSE rulings as these had not been made public at the time of writing.

#### *Actions Taken by the Electoral Prosecutor's Office after election day*

The Electoral Prosecutor registered some 25 cases of possible election day fraud in the Department of San Salvador, including cases of violation of the prohibition of alcohol consumption, irregular registration of voters (*traslado de votantes*) in the Municipality of San Buenaventura and one case of vote-buying in the Department of Usulután. Additionally, the Electoral Prosecutor investigated allegations of fraud in the Department of San Miguel and possible fraud by Smartmatic in relation to an error made during the distribution of preferential votes. One woman was arrested and charged for destroying her ballot paper at polling station 5,196 in Usulután. She was sentenced to two years imprisonment.

#### C. Political Overview of the Election Results

Results revealed that FMLN lost 13 seats in the 84 seat Legislative Assembly, leaving it with 18. As such, the party lost its veto power against majority decisions of the Legislative Assembly. FMLN received 505,000 votes, representing a 42% drop compared to the 850,000 votes it won in 2015. New faces in the AL are a minority as 54 incumbents were returned.<sup>34</sup>

<sup>33</sup> Election Law, Art. 215.

<sup>34</sup> 67 of the 84 deputies sought re-election, as 54 incumbents were returned, there were 30 newcomers (35.7%). FMLN features the highest number of newcomers (11 of its 23 deputies), followed by PCN (3 among 8 deputies) and ARENA (10 among 37 deputies). GANA has one newcomer.



ARENA lost just a few thousand votes, dropping from 885,000 in 2015 to 880,000. However, a low voter participation meant that the party gained three additional seats, leaving it with 35 seats. The other three right-leaning parties received more votes than in 2015. GANA won almost 30,000 additional votes and ended up with 235,000 votes, which translated into keeping 10 seats (one less than the number the party has held since 2012).

PCN scored the highest victory in these elections among all parties, raising its vote count from 155,000 in 2015 to 230,000. As such the party will go from holding the six seats it has always held since 2012 to holding eight. After possible alliances GANA and PCN could play a key role in issuing legislation and/or overruling presidential decisions requiring either simple majority (43) and/or qualified majority (56).

PDC received 55,000 votes in 2015 and won one seat, equally as in 2012, but with 60,000 votes in 2018 the party doubled its representation and will hold two seats. The right-leaning parties together won 110,000 more votes than in 2015 and obtained six additional seats in the Legislative Assembly, while the FMLN lost 350,000 votes and 13 seats.

One of the two remaining seats was obtained by CD (*Cambio Democrático*, a social-democratic party) with less than 20,000 votes. The party had held one seat in 2012 and was voted out of the Legislative Assembly in 2015. The last seat went to independent candidate Leonardo Bonilla, whose ideological position remains unclear, as he had previously been involved with ARENA, GANA and FMLN. Bonilla only obtained the seat due to the fact the residual vote of all four independent candidates was counted as if they belonged to one single party list, although they represented totally different programmes.

The newly-elected AL includes 26 women (31%), one less than the previous legislature. FMLN is the most gender inclusive party with 13 women among its 23 deputies (57%), followed by ARENA with 12 women among its 37 deputies (32%) and PCN with one woman among its eight deputies (12.5%). GANA and PDC do not have any women among their 10 and two deputies, respectively. There is even less gender balance on municipal level, as only 28 (11%) of the 262 mayors are women.

On municipal level, FMLN lost its previous bastion of the capital and four of the heavy-weight municipalities of the San Salvador Metropolitan Area (AMSS) to ARENA. FMLN's share of the capital vote fell from 85,000 in 2015 to 38,000, while ARENA raised its 2015 result of 82,000 votes to 88,000. Disputed San Miguel, the third city of the country, was kept by the FMLN mayor with a small vote margin against long-term mayor Will Salgado (currently with GANA), who tried unsuccessfully to have the elections repeated.

Among the country's 262 municipalities, FMLN lost 17 of its previous 82, while ARENA won 10 on top of its previous 129. GANA won 25 (six more than 2015) and PCN won 24 (eight more than 2015). Contrary to the past, two-thirds of the country's citizens will now live under ARENA municipal administration, as the small rural municipalities ruled so far by ARENA have much less population than the relevant AMSS municipalities. In departments and municipalities with tight results, ARENA, GANA and PCN requested recounts, which led to disputes over several days.

Analysts point out that these noteworthy changes in the country's political landscape are not so much due to an ideological shift to the right, but more in response to a disenchanted FMLN electorate that disapproved of the government's performance in public security, economic growth and job creation. A more emotional reason for FMLN voters might have been how the party treated the Funes case, which for the first time stained the party with the topic of corruption. Consequently, 42% of FMLN's 2015 electorate preferred to abstain from voting.



TSE preliminary results figures put participation at 45%, three percent below the 2015 turnout. This signals a steady downward trend in participation over the past five legislative elections. Political disillusionment also seems to be reflected in the high percentage of invalid and blank votes (9.8%), which almost tripled in number relative to previous elections.

The decrease in voter participation and the increase in invalid and blank votes appear to be at least partly triggered by Nayib Bukele, the popular current Mayor of the capital who, recently expelled from FMLN, called upon voters to abstain, vote blank or invalidate their ballot. In the departments of San Salvador and La Libertad, where Bukele still wields considerable influence, the number of invalid votes increased almost fourfold (387% in the capital, 353% in La Libertad), while in rural departments the increase was far less (only 32% in Cabañas).

In a post-electoral rally in Chalatenango on 10 March, Bukele thanked supporters for answering his appeal. He also took the opportunity to publicly accuse the TSE of purposely slowing down the final results tabulation to hinder the timely registration of his party *Nuevas Ideas*. The Political Parties Law does not allow the registration period for new parties to open until after announcement of final results from the previous elections.

Election results leave FMLN with a scenario close to the 1994 elections, the first ones after the Chapultepec Peace Accords, when the party had just started to consolidate after the civil war. At that time, the seat distribution in the Legislative Assembly was 39 ARENA, 21 FMLN and 22 other right-leaning parties (PCN, PDC). Following FMLN's 2018 electoral losses, some voices in the party requested changes in the top leadership and open primaries for determination of its presidential candidate. As a consequence, President Sánchez Cerén reshaped his government.



## 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>					
<b>1</b>	<p>Inadequate sanctions are detrimental to the effective enforcement of electoral laws. Sanctions are not dissuasive (e.g. low fines for the violation of propaganda law) and also not proportional (e.g. two-year imprisonment for the destruction of a ballot paper). (Final Report, A. Overview of Disputes, p. 25).</p>	<p><b>Calibrate administrative and penal sanctions for electoral infractions in order to achieve a more effective electoral justice.</b></p>	<p>Requires amendment to the Election Law and Penal Code.</p>	<p>Legislative Assembly</p>	<p>Rule of Law; Effective electoral justice and principle of proportionality</p> <p>IADC Art. 2 “The effective exercise of representative democracy...”</p>
<b>2</b>	<p>The official campaign for municipal elections started while some candidacies were pending TSE decision regarding appeals. This overlap originated legal uncertainty. (Final Report, A. Registration of Candidates, p. 15).</p>	<p>Review deadlines and administrative mechanisms to process claims and appeals in a timely manner in order to avoid overlapping of different phases of the electoral process.</p>	<p>Requires amendment to the Election Law.</p>	<p>Legislative Assembly and the TSE</p>	<p>Right to an effective remedy</p> <p>UDHR Art. 8 “Everyone has the right to an effective 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>



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>POLLING, COUNTING AND TABULATION OF RESULTS</b>					
<b>3</b>	Polling staff members do not always have the confidence to run the electoral process without party agents' intervention. (Final Report, A. Overview of Voting, p. 26).	Strengthen polling staff training to empower them as the authority in charge of conducting the electoral process at polling station level, free from partisan interference.	No change to legal framework is required.	Supreme Electoral Tribunal (TSE)	Independent Electoral Authority; Genuine Elections.  ICCPR Art. 25  ICCPR GC 25, Par. 20 "An independent electoral authority should be established..."  ICCPR GC 34, Par. 19 "To give effect to the right to Access information..."
<b>4</b>	The validity or invalidity of a vote is not clearly explained by any law or regulation. The existing poll worker manual does not establish precise criteria for decision-making on the wide range of cases that may arise. (Final Report, D. Tabulation of Final Results, p. 28).	Establish clear provisions for defining the validity of each vote.	No change to the legal framework is required.	Supreme Electoral Tribunal (TSE)	Right to Vote; Integrity of elections; Free Expression of the Will of Electors.  ICCPR GC 25 Par. 20 "...to supervise the electoral process and to ensure that it is conducted fairly, impartially..."



NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
5	High frequency of mathematical inconsistencies and irregularities in polling station results protocols leads to a much-delayed results aggregation process. (Final Report, D. Tabulation of Final Results, p. 28).	Strengthen polling staff training on filling in results protocols and introduce further measures for basic consistency checks in results protocols content before they leave the polling centre.	No change to legal framework is required.	Supreme Electoral Tribunal (TSE)	Integrity of the electoral process UNCAC, Art. 5(1) "...reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.  Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections, Pars. 4(2) and 4(6). "“Ensure the integrity of the process for counting votes.”"
6	During final results tabulation polling station results protocols with inconsistencies or substantive errors are addressed on an <i>ad hoc</i> basis and TSE decisions are not always grounded on clearly established provisions. (Final Report, D. Tabulation of Final Results, p. 28).	<b>Enhance the consistency of the final results tabulation process by establishing clearer criteria for the review of results protocols, correction of errors and opening of ballot boxes.</b>	No change to legal framework is required. Could be addressed by regulation.	Legislative Assembly	Legal Certainty; Genuine Elections ICCPR GC 25 Par. 20 "...to supervise the electoral process and to ensure that it is conducted fairly, impartially..."  IADC Art. 2 "The effective exercise of representative democracy..."



NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
7	Partisan activities in polling stations and around polling centres violate the campaign silence period and obstruct a neutral voting environment. The legal limit of one party agent per polling station was not enforced. (Final Report, A. Overview of Voting, p. 26).	<b>Forbid all forms of canvassing and particularly the use of campaign material inside voting centres, such as distinctive partisan clothing.</b>	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	Right to Vote.  ICCPR GC 25, Par. 11 "...intimidation or coercion of voters should be prohibited..."
<b>ELECTORAL ADMINISTRATION</b>					
8	Declarations of honour required to register as candidates are not verified for authenticity and can thus be disputed after candidacies are approved. (Final Report, A. Registration of Candidates, p. 12).	Introduce mechanism to allow the TSE to verify the authenticity of declarations within the legal registration period for candidates; strengthen inter-institutional cooperation to verify candidates meet legal requirements.	No change to legal framework is required.	Supreme Electoral Tribunal (TSE) and state institutions.	Equal Rights; Opportunity to be Elected.  ICCPR GC 25, Par. 9 "...the right of citizens to take part in the conduct of public affairs..."  ICCPR, Art. 26 "All persons are equal before the law..."
9	In line with a Constitutional Chamber decision, neither permanent nor temporary members of the election administration can have partisan affiliation. However, the electoral administration is still heavily politicised, and it is not always perceived as independent or neutral. (Final Report, A. Structure and Composition of the Election Administration, p. 9).	<b>Continue to untie the electoral administration from partisan control through the 'citizenisation' of its temporary structures, this would ideally be accompanied by a comprehensive civic education campaign.</b>	No change to legal framework is required.	Legislative Assembly	Genuine elections; Independent electoral authority.  ICCPR Art. 25  ICCPR GC 25, Par. 20 "An independent electoral authority should be established..."





NO.	CONTEXT (Including reference to the relevant section of the FR)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
10	The TSE exercises administrative and jurisdictional competencies simultaneously. As such, the TSE takes judicial decisions on its own administrative measures. (Final Report, A. Structure and Composition of the Election Administration, p. 9).	Separate the TSE's administrative and judicial functions.	Requires amendment to the Election Law.	Legislative Assembly	Right to an Effective Remedy by competent national tribunal.  ICCPR Art. 25 "Every citizen shall have the right and opportunity..."
11	The proposed 2018 elections budget was reduced by 35% by the Treasury, even though Art. 274 of the Elections Law provides for TSE financial autonomy and states that, in election years, the budget should be transmitted to the Legislative Assembly for approval with no modifications by the Treasury. (Final Report, A. Structure and Composition of the Election Administration, p. 9).	Ensure TSE financial independence and decision-making autonomy by guaranteeing strict application of the Election Law. Set a clear timetable for the budget approval and guarantee adequate economic resources for key areas of the electoral process such as voter education, polling staff training, media regulation enforcement and results management technology.	No change to legal framework is required.	Government  Legislative Assembly	Independent Electoral Authority.  ICCPR, GC 25, Par. 20 "An independent electoral authority should be established..."  UN Human Rights Council, 2012 Special Report on Cambodia, Par. 65.
12	Electoral management body does not always have the necessary material and human resources to fulfil its responsibilities without relying on political parties. (Final Report, B. Administration of the Elections, p. 10).	Strengthen institutional capacities of the election management body by guaranteeing the necessary legal support and coherent and consistent communication between all levels of the TSE.	No change to legal framework is required.	Supreme Electoral Tribunal (TSE)	Effective Management of Election Administration  ICCPR GC 25 Par. 20 "An independent electoral authority should be established..."



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>VOTER REGISTRATION</b>					
13	The voter register is considered generally inclusive, but also inflated by deceased persons. (Final Report, B. Voter Registration Procedures, p. 11).	Ensure a more accurate voter register by undertaking a comprehensive updating and cleansing of the National Registry of Natural Persons (NRNP), this would necessary entail an improved reporting system from the municipalities to the NRNP.	No change to legal framework required. Improved administrative planning required.	Government National Registry of Natural Persons	Universal Suffrage ICCPR GC 25, Par. 11 "States must take effective measures to ensure that all persons entitled to vote..."
<b>CANDIDATE REGISTRATION</b>					
14	Plurality of municipal councils could be improved with the introduction of independent candidates. (Final Report, A. Registration of Candidates, p. 12).	Allow independent candidates and citizen's groups to present candidatures for municipal elections.	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	Right to have access to public service, right to vote and to be elected. ICCPR GC 25, Pars. 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..."
15	There is a void in the legal framework inasmuch as independent candidates cannot appoint agents. This aspect requires legislating and regulating. The requirements for independent candidates are burdensome and disproportionate relative to those of political parties. (Final Report, A. Registration of Candidates, p. 12).	Provide independent candidates the right to appoint agents and to receive campaign financing and advertising slots in the public media.	Requires amendment to the Election Law.	Legislative Assembly	Freedom from Discrimination and Equality under the Law; Right and Opportunity to be Elected. ICCPR GC 25 Par.16



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>MEDIA AND ELECTIONS</b>					
16	Limited free airtime for political parties in the public media, restricted to the last five days of the campaign period, and excluding independent candidates for the Legislative Assembly. (Final Report, B. Legal Framework for the Media, p. 18).	Consider extending the five-day free airtime period for political parties in the public media to improve opportunities for participants to socialise their political platforms, and consider to allow independent candidates to also benefit from free airtime.	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	<p>Equal Right and Opportunity to be Elected; States Must Take Necessary Steps to Give Effect to Rights</p> <p>ICCPR Art. 2(2) "...to adopt such laws or other measures..."</p> <p>ICCPR GC 25, Pars. 25 "...the free communication of information and ideas about public and political..."</p> <p>ACHR Art. 13, 23 "Everyone has the right to freedom of thought and expression..."</p>
17	Journalist and media are often subject to threats from political actors or criminal groups. The current media framework might generate self-censorship and dissuade independent and investigative journalism. (Final Report, A. Media Environment, p. 16).	Ensure freedom of expression is duly protected by effectively prosecuting violence and pressure against journalists and media, and amend media law to ensure it does not limit independent or investigative journalism.	Adoption of a Law on Protection of Journalists and Media Workers; Amendments to the Penal Code - art. 180, art. 338; Amendment to the Special Law for the Right to Rectification or Response - art.15.	Legislative Assembly	<p>Freedom of Opinion and Expression; Right to the Security of Persons.</p> <p>ICCPR Art. 19 "...the right to hold opinions without..."</p> <p>ACHR Art. 13, 14 "...right to freedom of thought..."</p> <p>Declaration of Principles on Freedom of Expression - ACHR Arts. 5 "Every person has the right to person liberty and security..."</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
18	There is an unequal distribution of institutional publicity by the Government. (Final Report, B. Legal Framework for the Media, p. 18).	Regulate institutional advertisement attribution mechanisms to ensure a more equal distribution of government publicity.	Requires amendment to the Election Law.	Legislative Assembly	Prevention of Corruption UNCAC Arts. 9 Public Procurement and Management of Public Finances
<b>CAMPAIGN FINANCE</b>					
19	The TSE, although responsible for auditing, lacks resources to audit financing of political parties and 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. 15).	<b>Improve the TSE's capacity to fulfil its obligations to audit political financing and adopt adequate and proportional sanctions for non-compliance.</b>	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	Access to Information; Prevention of Corruption UN COHR Res. 2000/47 Art. 1d(iv) ICCPR GC 25, Pars. 18 and 19 ICCPR Art.25 UNCAC Arts. 7(1)d, 7(3) and 12(1)
20	Disproportionate spending in political ads by candidates and political parties, in the clear advantage of the two main political parties. (Final Report, C. Media Monitoring Findings and Campaign in the Media, p. 19).	Introduce limitations in spending and/or volume of political advertisements for candidates and political parties in the private media, especially during peak hours on radio and television.	Requires amendments to the Election Law and Political Party Law.	Legislative Assembly	Equal Rights; Opportunity to be Elected; States Must Take Necessary Steps to Give Effect to Rights ICCPR Arts. 2(2), 25, 19 ICCPR GC 25, p. 19 ACHR Art. 13, 23 Statement of the Council of Presidents and Prime Ministers of the Americas - Financing Democracy: Political Parties, Campaigns, and Elections, Carter Center, 2003.



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>POLITICAL PARTICIPATION OF WOMEN</b>					
21	The legal quota of 30% on party lists is silent on ranking order of candidates for the Legislative Assembly. Only 10% of municipal councils are led by women. In line with regional trends, El Salvador is committed to achieve parity between men and women. (Final Report, XII Political Participation of Women, p. 21).	Promote effective measures for women to reach representation parity in all elected positions.	Requires amendment to the Political Party Law.	Legislative Assembly	Equality of men and women in the enjoyment of all civil and political rights  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.
<b>POLITICAL PARTICIPATION OF INDIGENOUS CITIZENS</b>					
22	There is hardly any participation of indigenous candidates. (Final Report, XV Political Participation of Indigenous Citizens, p. 23).	Undertake affirmative action to address the lack of inclusion of indigenous peoples in the country's political life and ensure and facilitate the exercise of their political rights, especially to promote indigenous representation.	Requires amendment to the Election Law.	Legislative Assembly	Right to Participation without Restrictions and in Equal Conditions.  ICCPR Art. 2, 3 and 25 "...ensure to all individuals within its territory..."  ICCPR GC 25, Pars. 11 and 23 "States must take effective measures to ensure..."



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>POLITICAL PARTICIPATION OF THE LGBTI COMMUNITY</b>					
<b>23</b>	Transgender and transsexual people are not allowed to change their name or gender on their ID. This is problematic for candidates and voters when the name and gender on their ID does not correspond with their physical appearance.	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	Right to Vote and to be Elected; Non-discrimination  ICCPR, Art. 2 “...ensure to all individuals within its territory...”  ICCPR GC 25 Par. 3 “...no distinctions are permitted between citizens...”  ACHR Arts. 1, 11.2, 18 and 24 “...without any discrimination for reasons of...”  ACHR Consultative Opinion OC-24/17

- 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)



XX. Annexes

ANNEX A: Follow Up on 2009, 2012 and 2014 EU Recommendations

No.	RECOMMENDATIONS EU OBSERVATION ACTIVITIES	STATUS OF IMPLEMENTATION
<b>ELECTION ADMINISTRATION</b>		
1	The Supreme Electoral Tribunal (TSE) would benefit from being depoliticised, with appointments made according to legally-established criteria of neutrality and technical experience.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>IMPLEMENTED, PARTY INFLUENCE REMAINS</b>
2	Broadest consensus would be achieved by mechanism of a civil society Nomination Commission, followed by approval by a qualified majority of the National Congress.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>NOT IMPLEMENTED</b>
<b>RIGHT TO VOTE</b>		
3	Take the necessary measures to ensure voting for citizens in hospitals and those detained on remand, as well as members of the military and cadets in military academies.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>PARTIALLY IMPLEMENTED</b>
4	Necessary mechanisms be established in order to enable Salvadoran out-of-country residents to exercise the right to suffrage, such as consular voting or postal voting with easier procedures.	Recommended by 2012 and 2014 EU EEMs. <b>PARTIALLY IMPLEMENTED</b>
<b>VOTER REGISTER</b>		
5	The Electoral Register be continuously purged in order to reduce the number of deceased persons and to detect double entries. Cooperation between TSE, RNPN and Municipal Offices is essential to achieve this goal.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>PARTIALLY IMPLEMENTED</b>



No.	RECOMMENDATIONS EU OBSERVATION ACTIVITIES	STATUS OF IMPLEMENTATION
<b>POLITICAL PARTIES</b>		
6	To regulate in the new Political Party Law the sources and limits of private and/ or public financing of political parties and of their campaign expenditures in detail, as well as the obligation to audit these by the TSE.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>PARTIALLY IMPLEMENTED</b>
<b>INSTITUTIONAL ADVERTISING</b>		
7	To enact a law regulating political parties' access to the media and limiting party spending on propaganda in the media. Such measures would prevent the reflection of budgetary imbalances between political parties in their media campaigns.	Recommended by 2014 EU EEM. <b>NOT IMPLEMENTED</b>
<b>ACCESS TO MEDIA</b>		
8	It is recommended that the Electoral Law should regulate the topic of free airtime in equal conditions in state-owned media for the electoral campaigns of all political parties and also regulate the media presence of the President of the Republic during electoral silence.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>PARTIALLY IMPLEMENTED</b>
<b>COMPLAINTS AND APPEALS</b>		
9	The TSE's administrative and judicial functions be separated and put under the control of two different institutions. This separation would create greater efficiency in the organisation of electoral processes. This setup would be more efficient within a TSE free from party interference.	Recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>NOT IMPLEMENTED</b>
10	The new Electoral Code would regulate in a more comprehensive way 1) the specific functions and competencies of the TSE collegiate body as well as its decision-making mechanisms; 2) the setup of an efficient and dissuasive system of sanctions for cases of violations of electoral legislation; 3) clear rules as to the rights and limits of party agents at polling; 4) clear rules to determine null votes, and the introduction of mechanisms to resolve invalid votes on levels of the electoral administration superior to the JRV.	Partially recommended by 2009 EU EOM and 2012 and 2014 EU EEMs. <b>PARTIALLY IMPLEMENTED</b>
<b>EXTENSION OF MANDATES</b>		
11	It is recommended to synchronise the electoral cycles for Presidential Elections (currently five years) and for Legislative and Municipal Elections (currently three years) by extending the latter cycle and holding General Elections every five years.	Recommended by EU EEM 2014. <b>NOT IMPLEMENTED</b>





## ANNEX B: Media Monitoring Results – EU EOM EL SALVADOR 2018

The EU EOM carried out, between 5 February and 28 February a quantitative and qualitative analysis of the coverage (time/space, tone) of a selection of television channels, radio stations and newspapers dedicated to the relevant political actors of the electoral process (candidates, political parties, alliances and government).

The media monitoring sample included:

- 4 television channels:
  - private: Canal 6; Canal 19; Canal 29 (*Gentevé*)
  - public: *Televisión Nacional de El Salvador* (TVES – Canal 10)
- 3 private radio stations
  - private: *Radio Maya Visión*; *Radio YSKL*
  - public: *Radio Nacional de El Salvador* (RNES)
- 3 private nationwide daily newspapers:
  - *Diario Co Latino*
  - *El Diario de Hoy*
  - *La Prensa Gráfica*

The relevant programmes were analysed (paid advertising in the private media, free advertising in the public media, institutional advertising, news, debates, interviews, live coverage) in the timeslots between 18:00 and 24:00 for the television stations, and between 06:00 and 12:00 for the radio stations, as well as in the content of the newspapers (news, advertisements).

The media monitoring measured how much coverage was given to candidates and political parties by recording broadcast time (in seconds) on radios and television stations, as well as the amount of space (square centimetres) in the newspapers. The tone of coverage in which each monitored political actor has been presented in the programmes of editorial coverage (positive, neutral or negative), excluding paid electoral advertising, was also assessed.<sup>1</sup>

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<sup>1</sup> The public radio and television, RNES and TVES (Canal 10), do not broadcast paid advertisements from political parties and candidates.



**Breakdown of paid political advertisements for candidates/political parties (5 to 28/02)**

Political parties and candidates	Television channels with major ratings	Radio stations with major ratings	Newspapers with major circulation
ARENA	33%	53%	68%
FMLN	50%	17%	23%
GANA	7%	12%	5%
PCN	2%	7%	0%
PDC	2%	2%	4%
Others	6%	9%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Breakdown of editorial coverage<sup>2</sup> in the private media (05/02 – 28/02)**

Political parties and candidates	Television channels with major ratings	Radio stations with major ratings	Newspapers with major circulation
ARENA	31%	33%	47%
FMLN	30%	21%	26%
GANA	12%	14%	9%
PCN	8%	25%	6%
PDC	9%	4%	6%
Others	10%	3%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Breakdown of editorial coverage of the political actors in the public media (5 to 28/02)**

Political actors	<i>Televisión Nacional (TVES)</i>	<i>Radio Nacional (RNES)</i>
Government	10%	48%
ARENA	11%	22%
FMLN	25%	21%
GANA	16%	2%
PCN	15%	1%
PDC	12%	2%
Others	11%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>

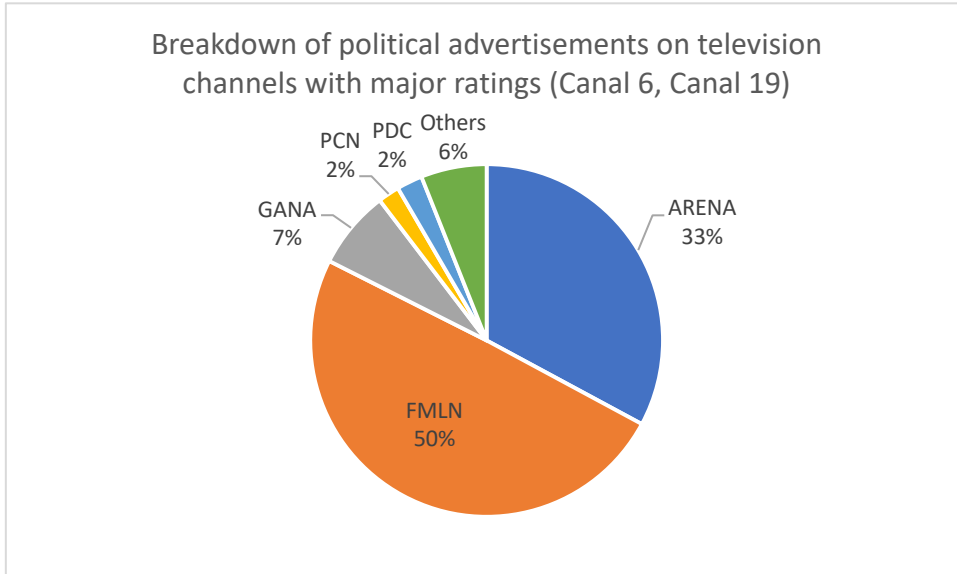
**Breakdown of institutional/campaign coverage of the government in public media (5 to 28/02)**

Government	<i>Televisión Nacional (TVES)</i>	<i>Radio Nacional (RNES)</i>	Total
Government (institutional)	72%	63%	67,5%
Government (campaign)	28%	37%	32,5%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

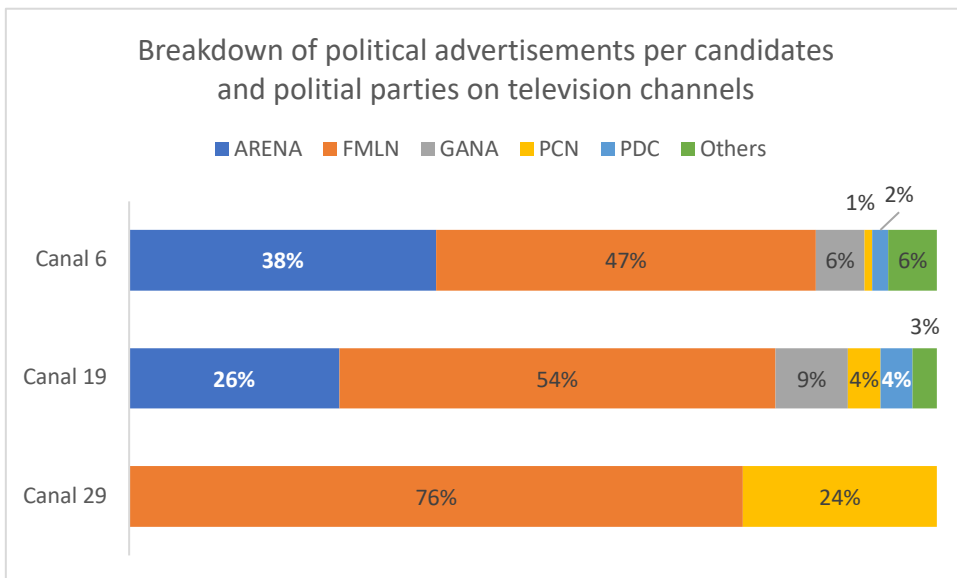
<sup>2</sup> The editorial coverage mostly includes news, interviews, debates, and live coverage of campaign events.



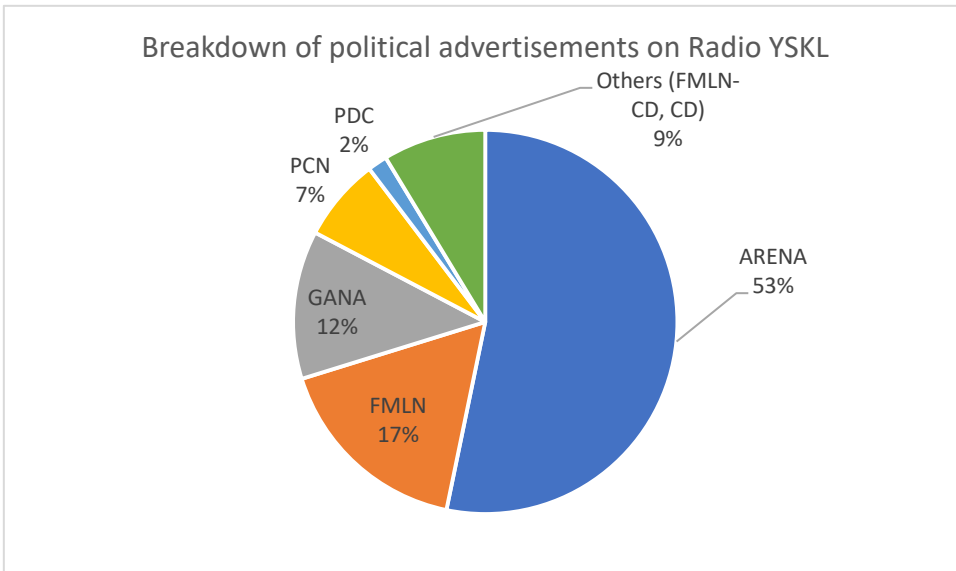
**PAID ADVERTISEMENTS IN THE MEDIA FROM THE CANDIDATES AND POLITICAL PARTIES**



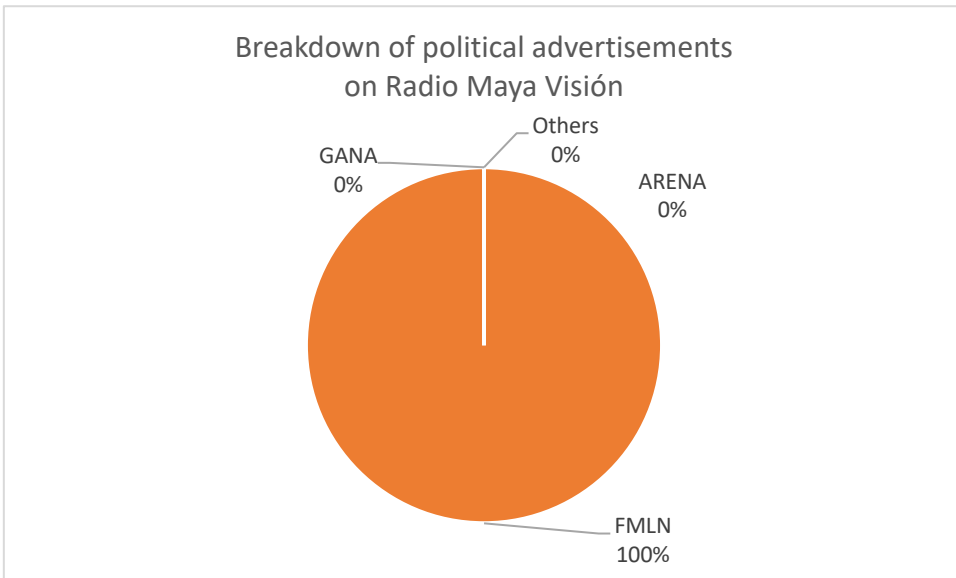
Base: 25,609 (seconds)



Base: 41,789 (seconds)



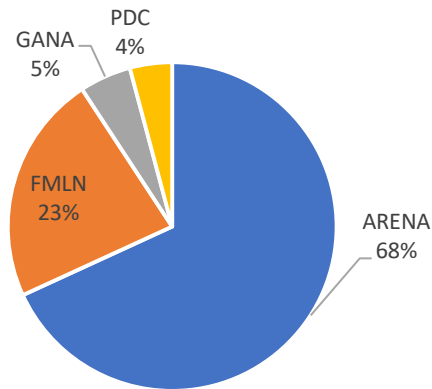
Base: 41,236 (seconds)



Base: 36,777 (seconds)

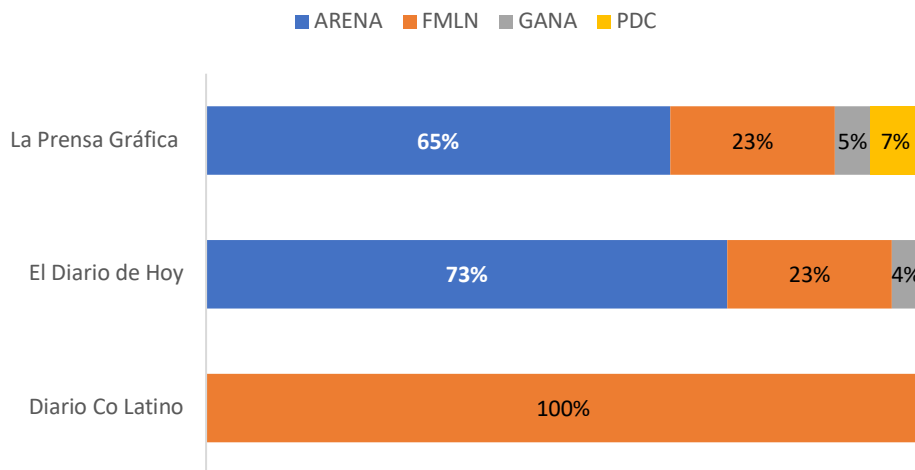


Breakdown of political advertisements in the newspapers with major circulation (La Prensa Gráfica, El Diario de Hoy)



Base: 50,691 (square centimetres)

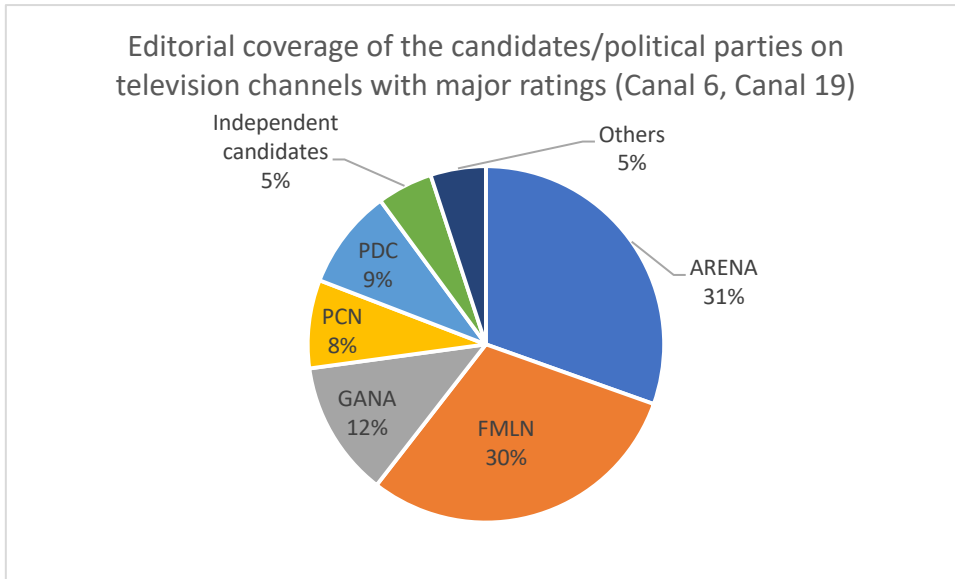
Breakdown of political advertisements in the newspapers



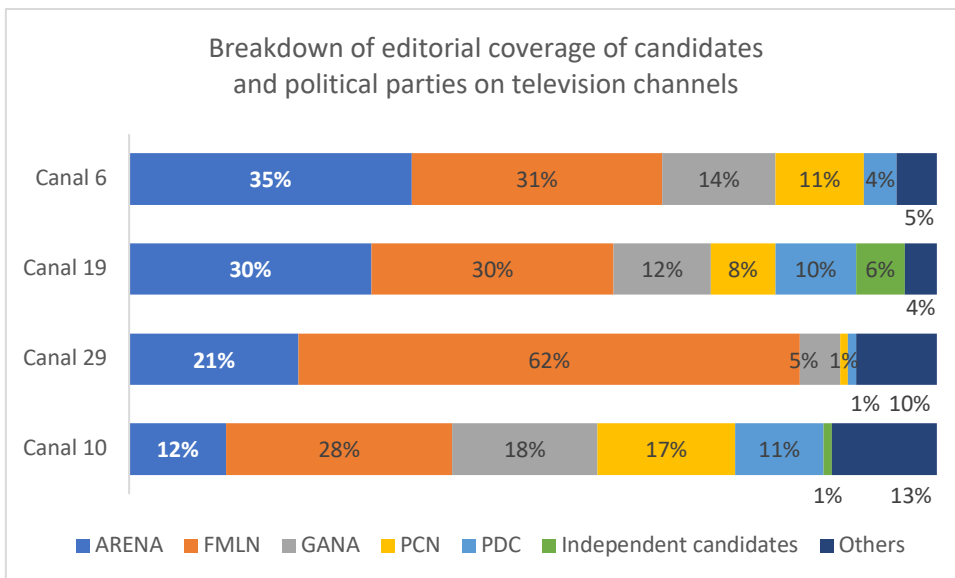
Base: 57,735 (square centimetres)



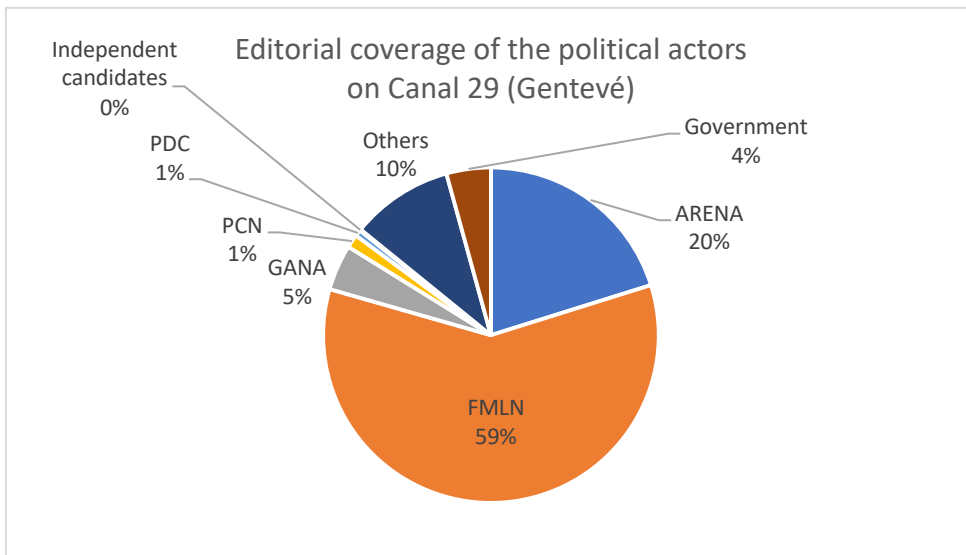
**EDITORIAL COVERAGE OF THE CANDIDATES AND POLITICAL PARTIES IN THE MEDIA**



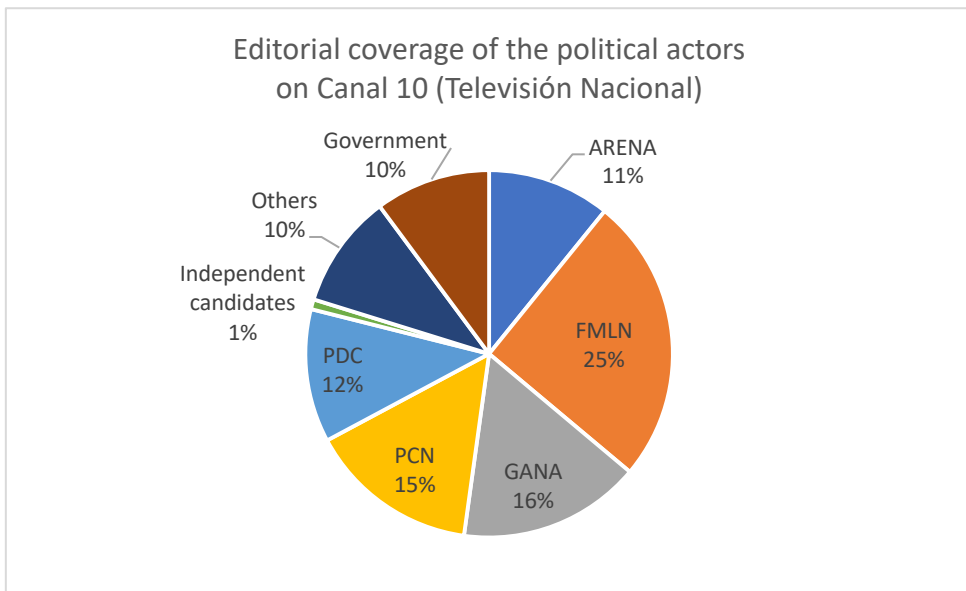
Base: 78,896 (seconds)



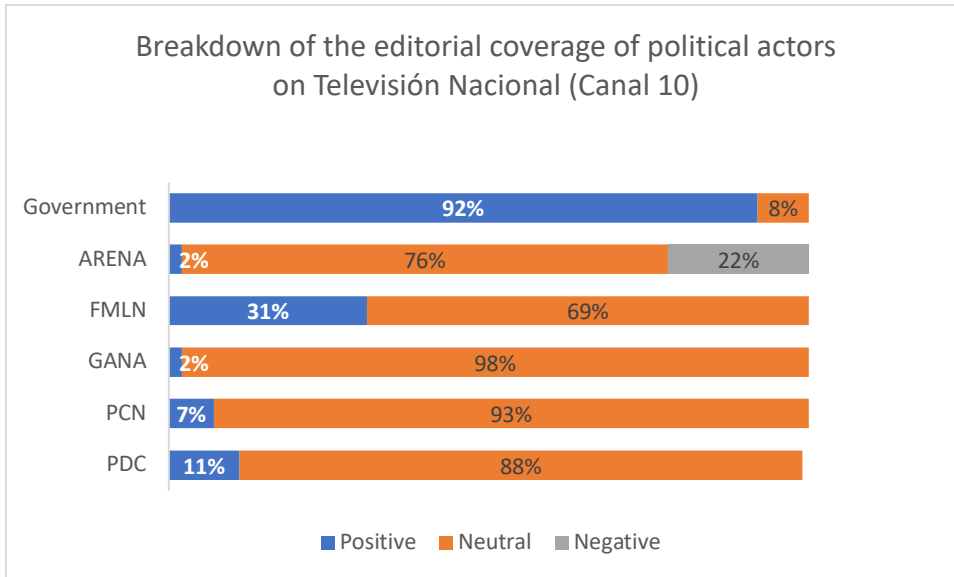
Base: 267,536 (seconds)



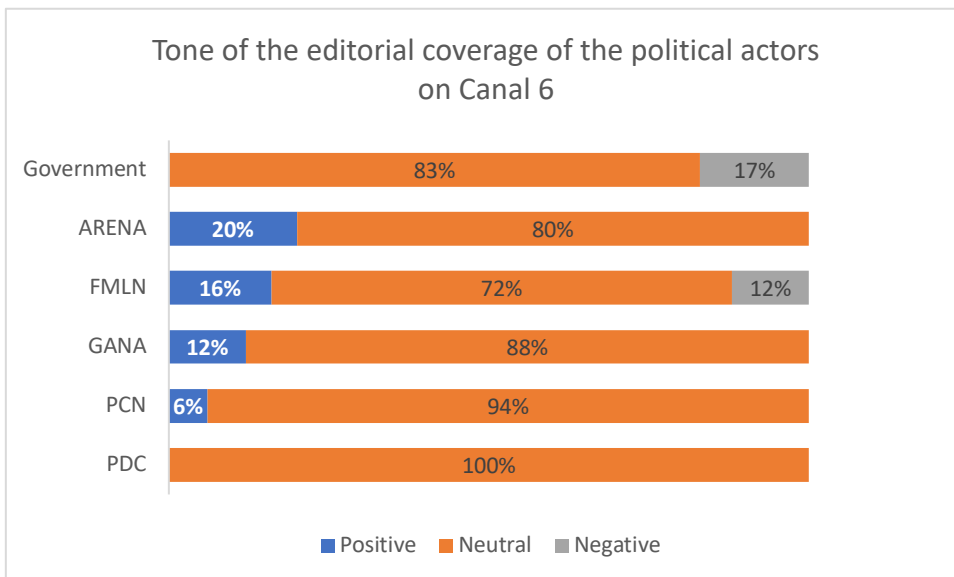
Base: 78,035 (seconds)



Base: 126,819 (seconds)

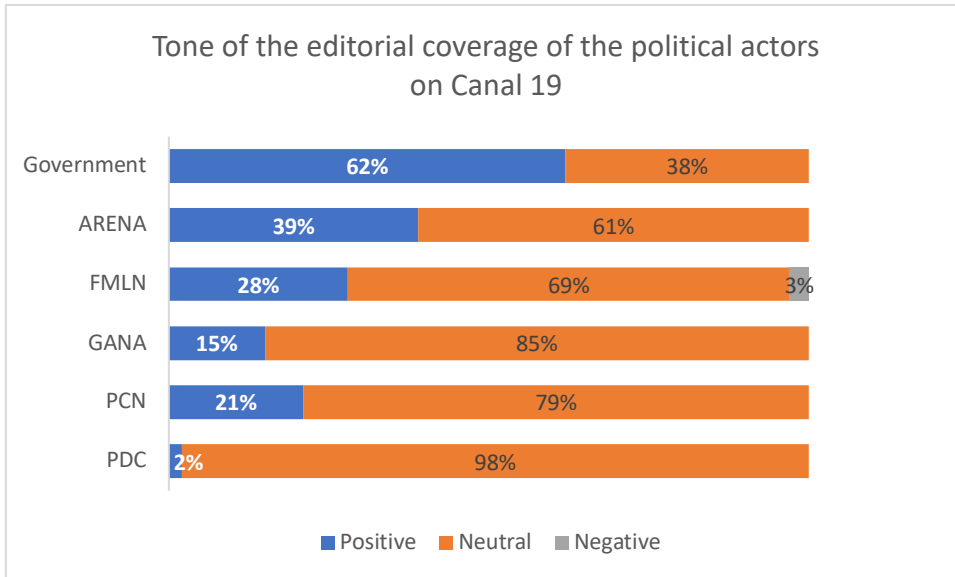


Base: 126,819 (seconds)

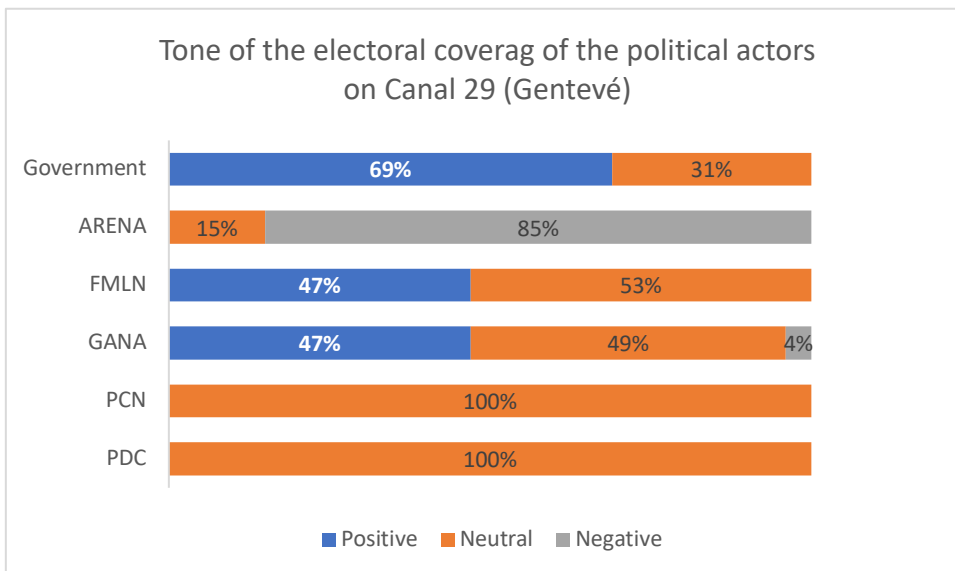


Base: 12,263 (seconds)

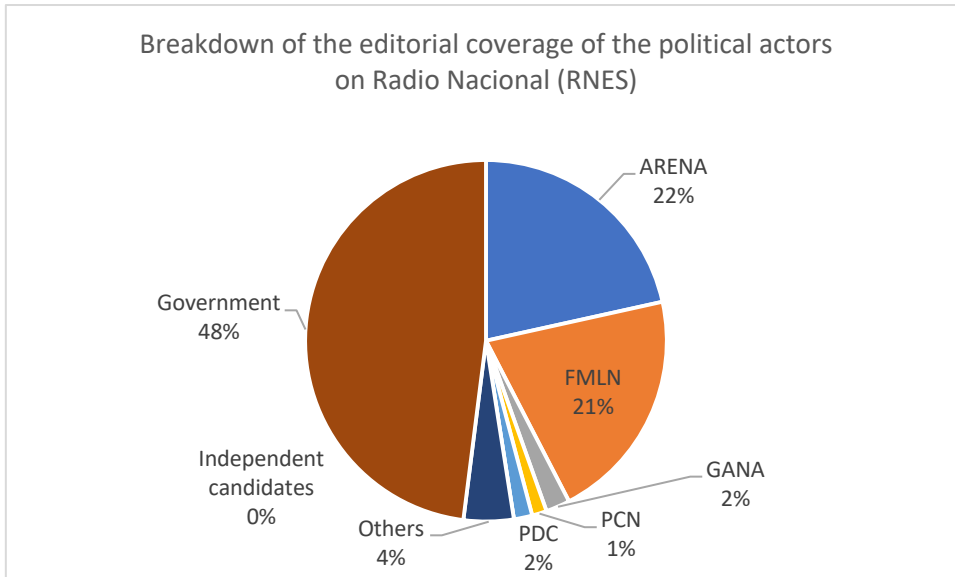




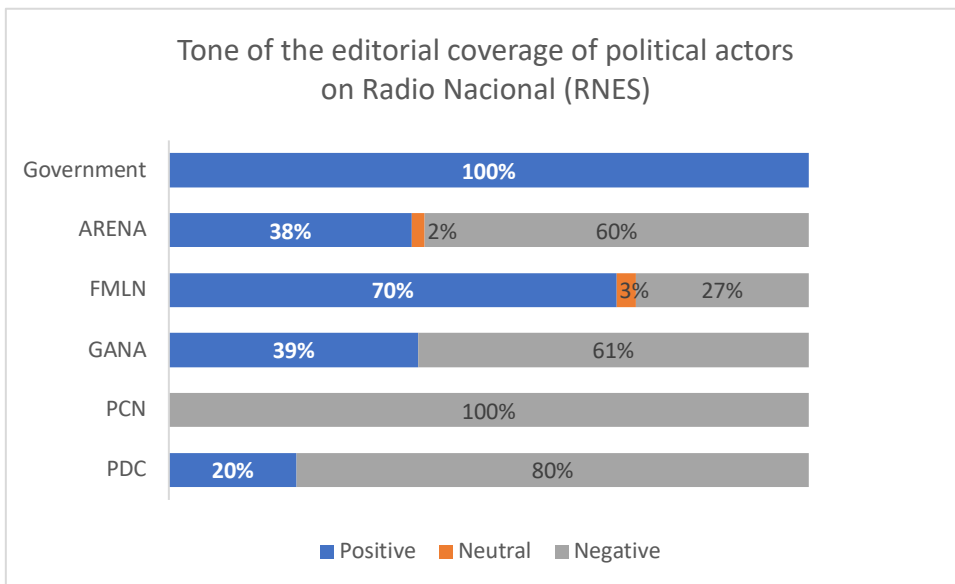
Base: 69,321 (seconds)



Base: 72,478 (seconds)



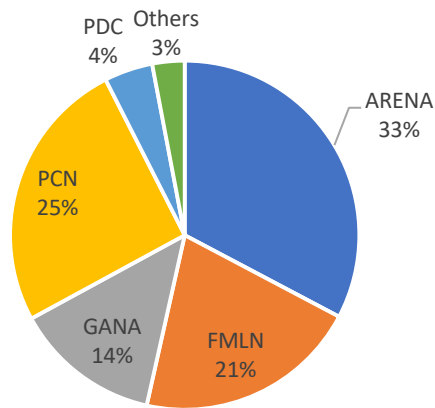
Base: 33,720 (seconds)



Base: 33,720 (seconds)

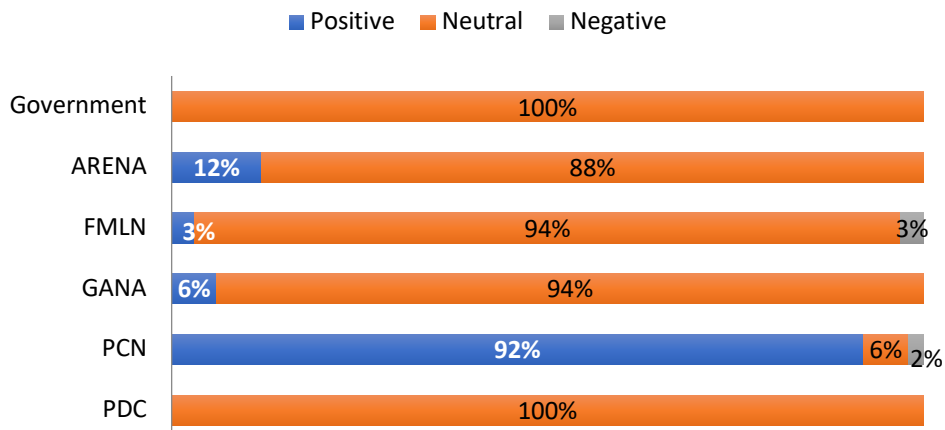


### Editorial coverage of the candidates and political parties on Radio YSKL



Base: 55,584 (seconds)

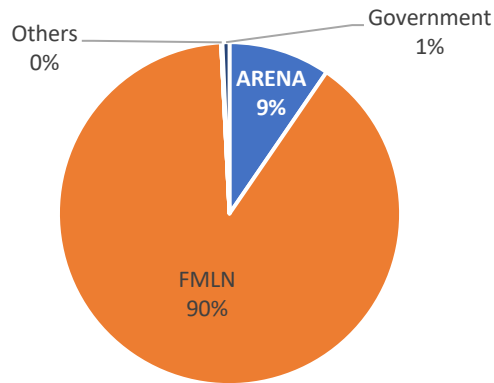
### Tone of the editorial coverage of the political actors on Radio YSKL



Base: 56,081 (seconds)

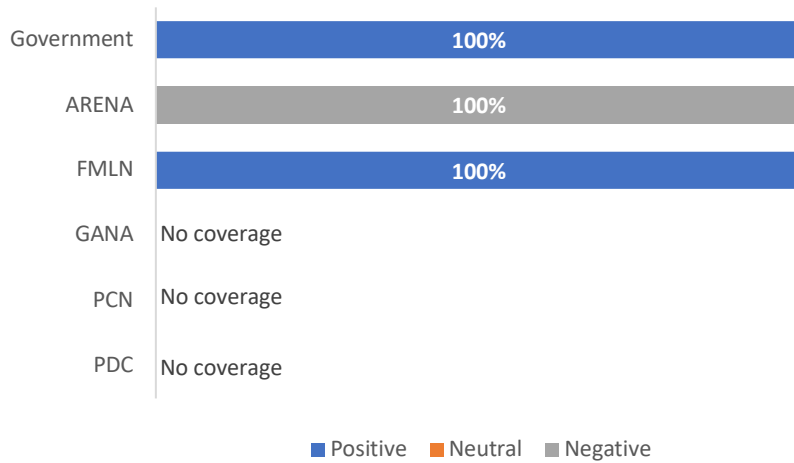


### Breakdown of the editorial coverage of the political actors on Radio Maya Visión



Base: 191,319 (seconds)

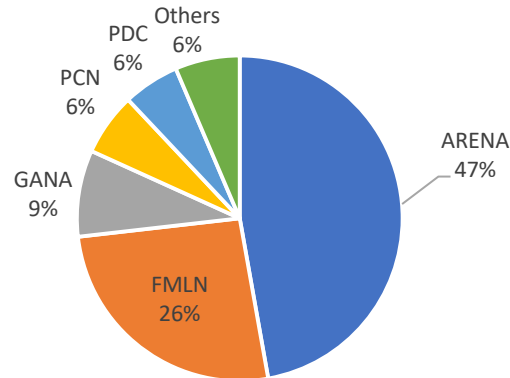
### Tone of the editorial coverage on Radio Maya Visión



Base: 191,319 (seconds)

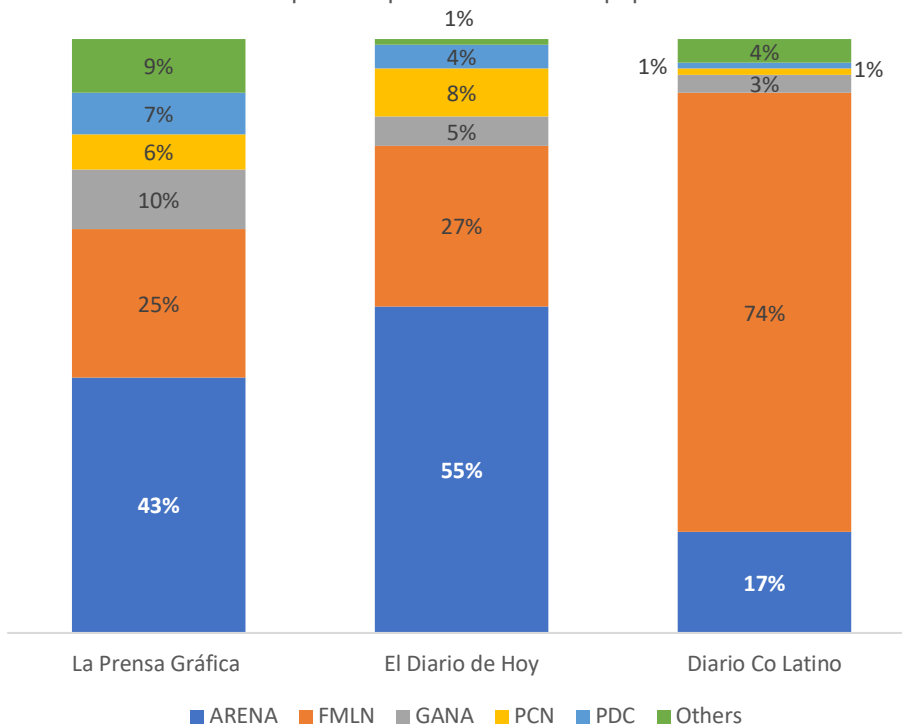


Editorial coverage of candidates and political parties in newspapers with major circulation (La Prensa Gráfica, El Diario de Hoy)

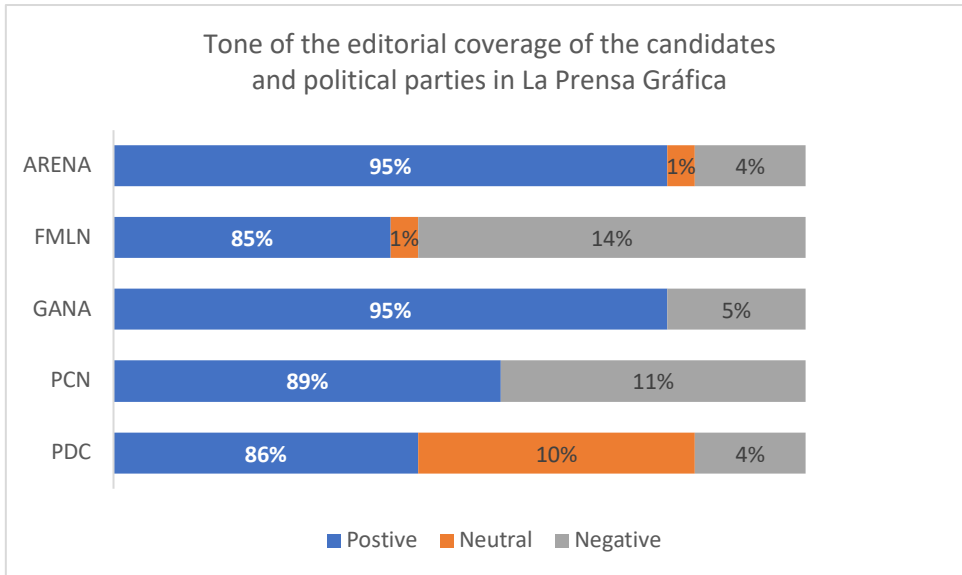


Base: 177,594 (square centimetres)

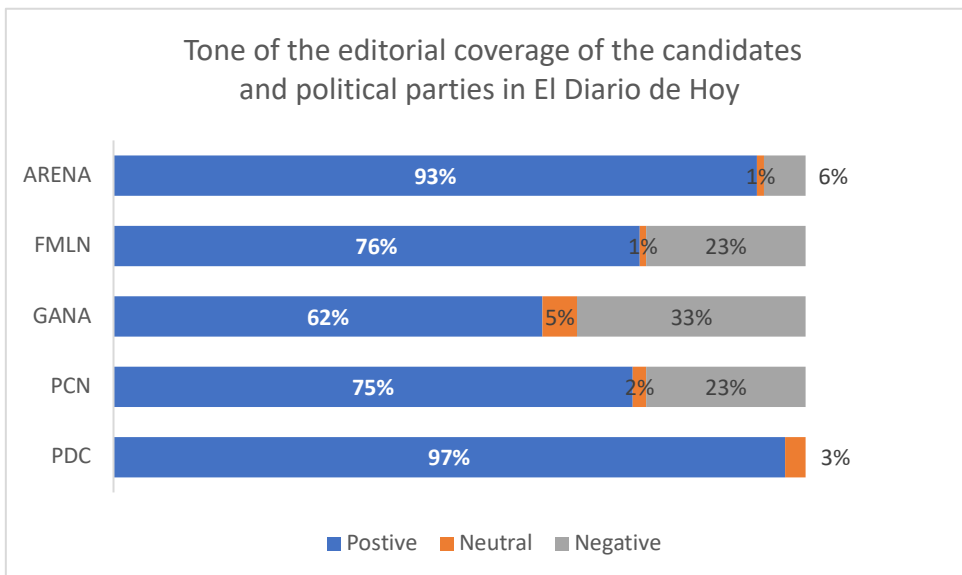
Breakdown of the editorial coverage of candidates and political parties in the newspapers



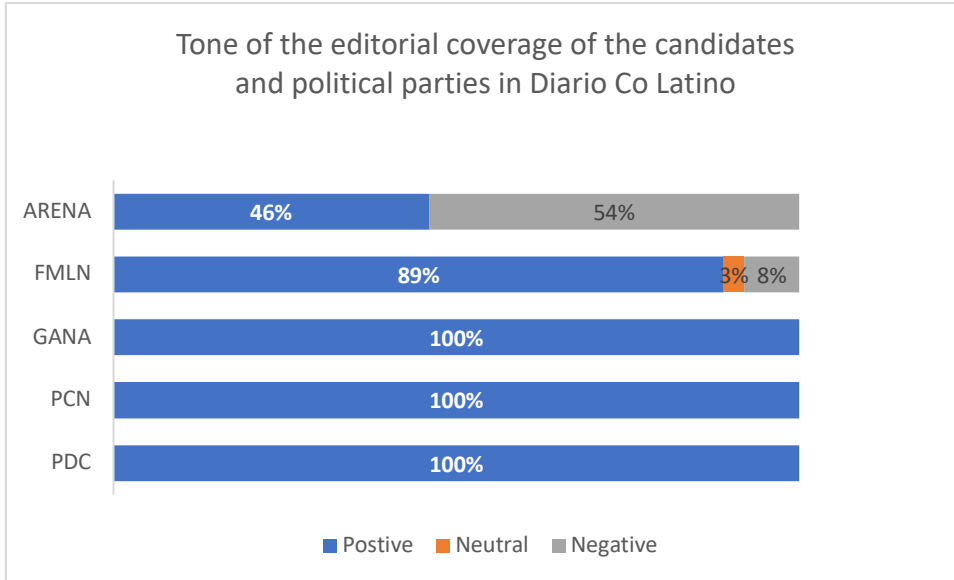
Base: 220,969 (square centimetres)



Base: 116,457 (square centimetres)

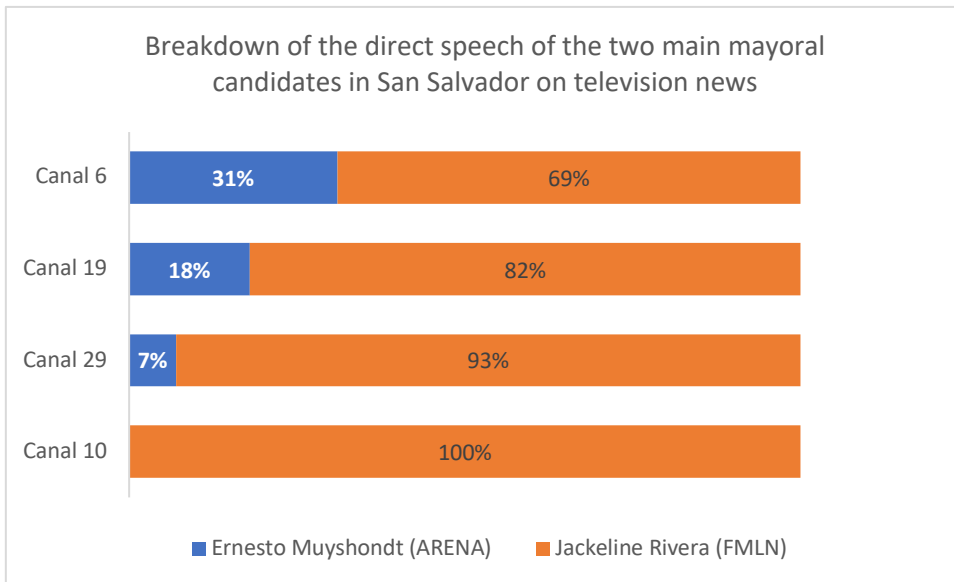


Base: 61.137 (square centimetres)

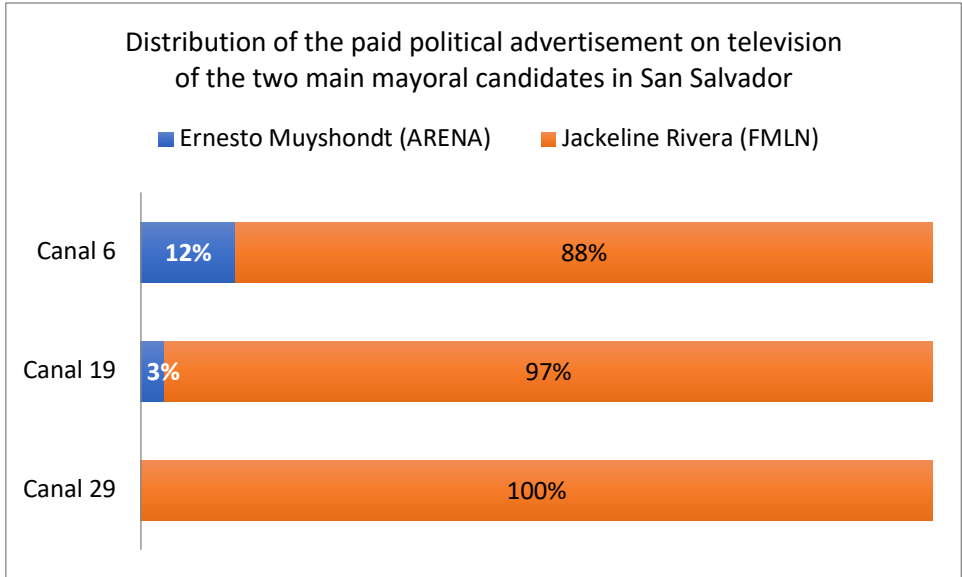


Base: 43,375 (square centimetres)

**BREAKDOWN OF THE EDITORIAL COVERAGE AND PAID ADVERTISEMENTS ON TELEVISION OF THE TWO MAIN MAYORAL CANDIDATES IN SAN SALVADOR**

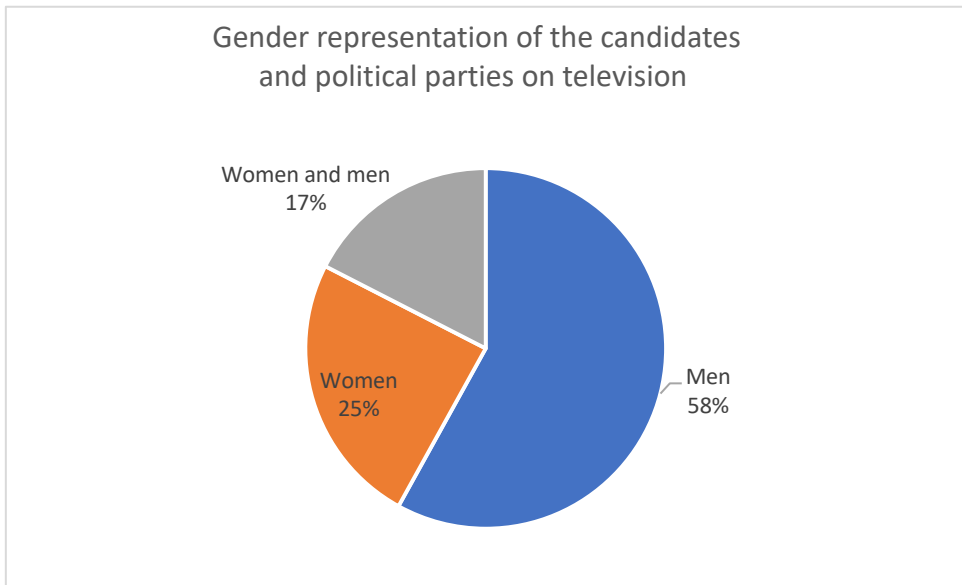


Base: 8,835 (seconds)



Base: 10,181 (seconds)

### GENDER REPRESENTATION IN THE NEWS AND POLITICAL COVERAGE ON MEDIA

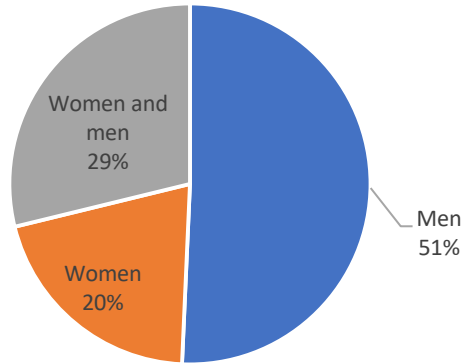


Base: 258,820 (seconds)



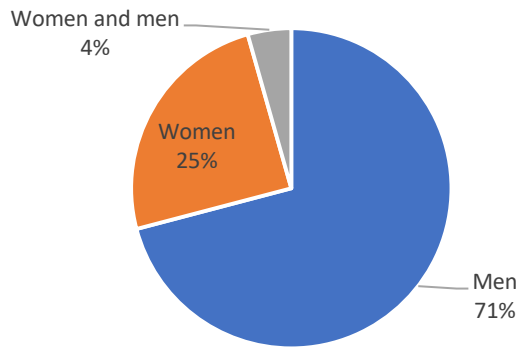


Gender representation of the candidates  
and political parties on radio



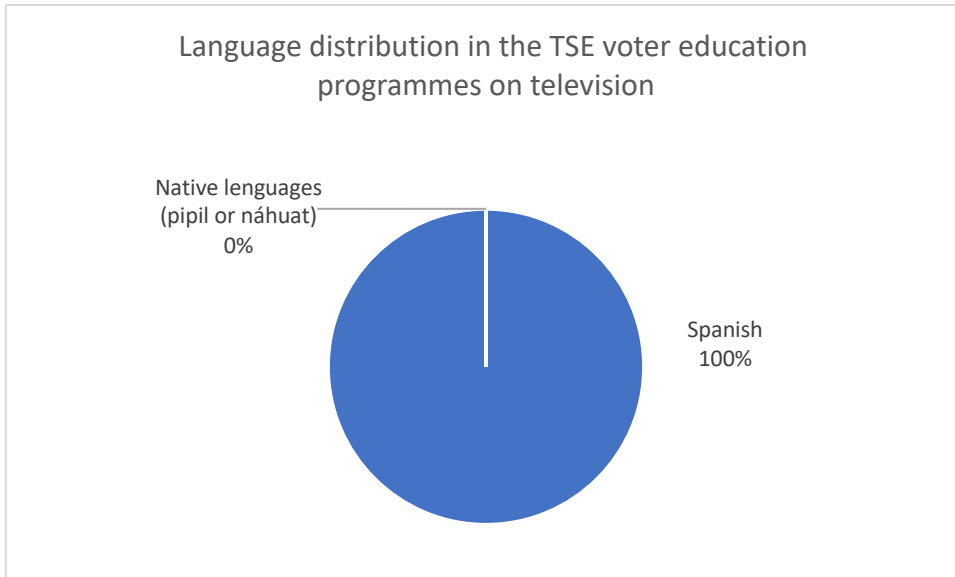
Base: 263,298 (seconds)

Gender representation of the candidates  
and political parties in the newspapers

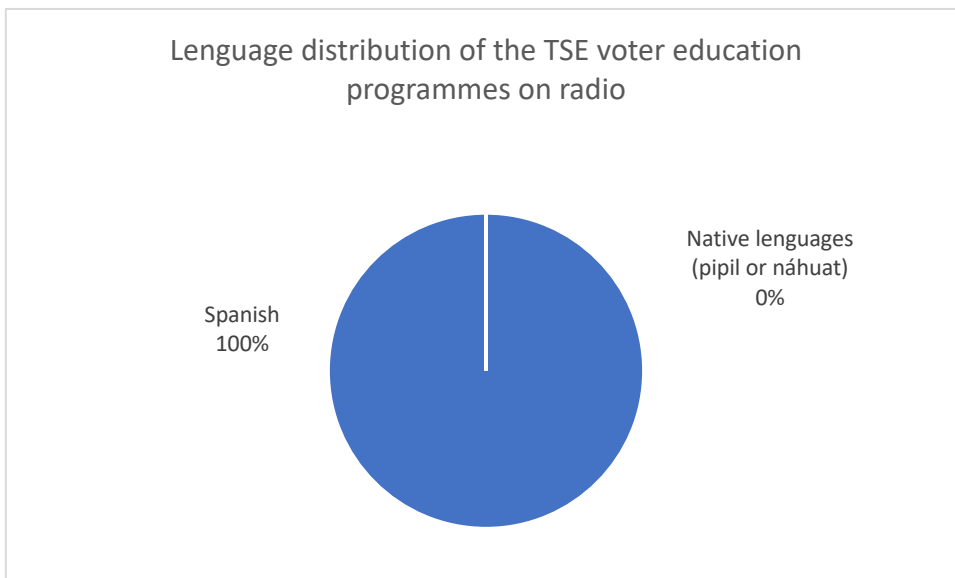


Base: 147,373 (square centimetres)

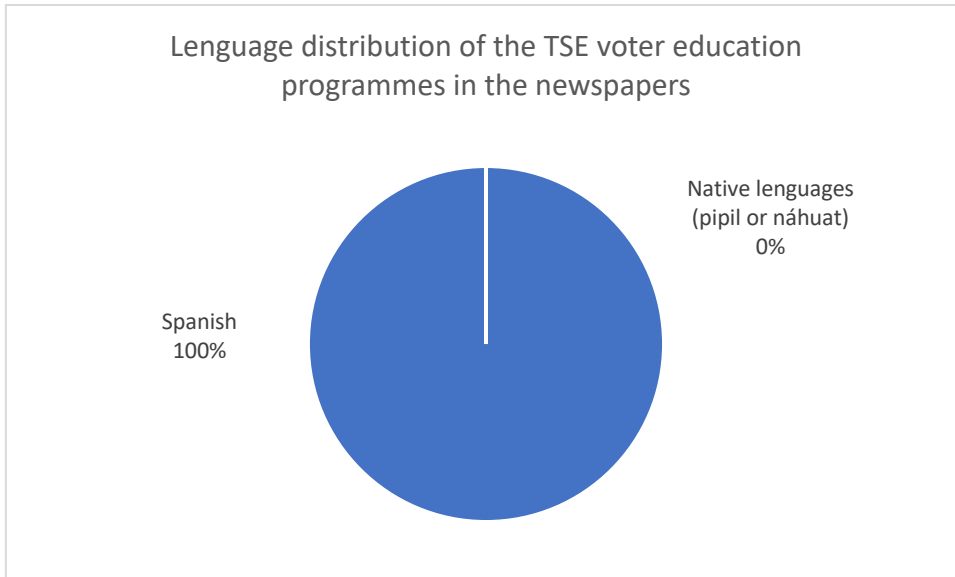
**LANGUAGE REPRESENTATION IN THE VOTER EDUCATION PROGRAMMES OF THE TSE**



Base: 8,128 (seconds)



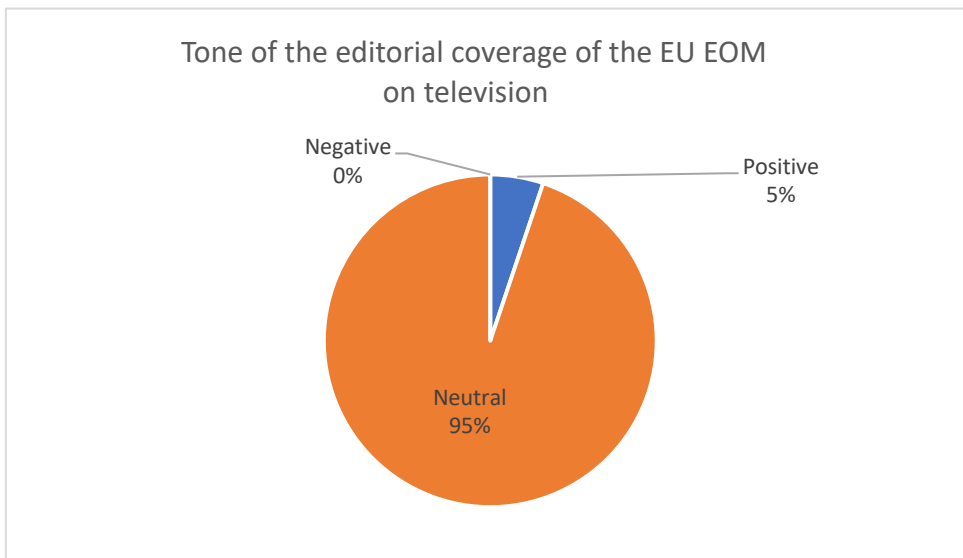
Base: 16,765 (seconds)



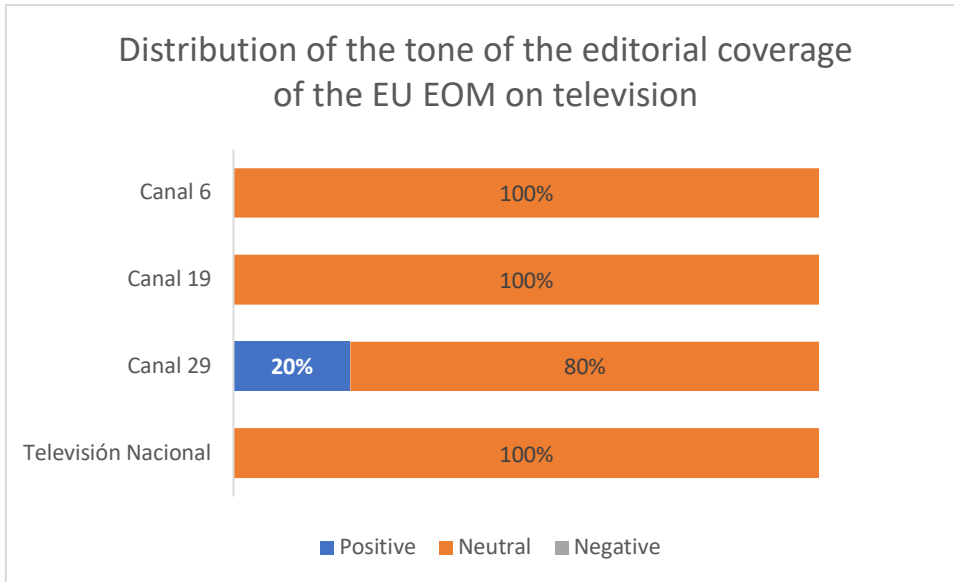
Base: 4,579 (square centimetres)

#### EDITORIAL COVERAGE OF THE EU EOM IN THE NEWS

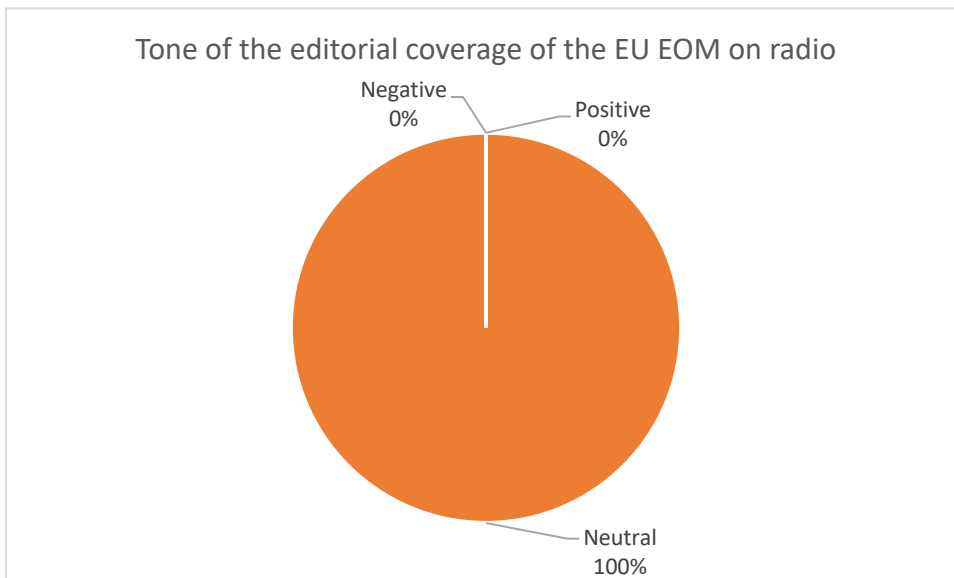
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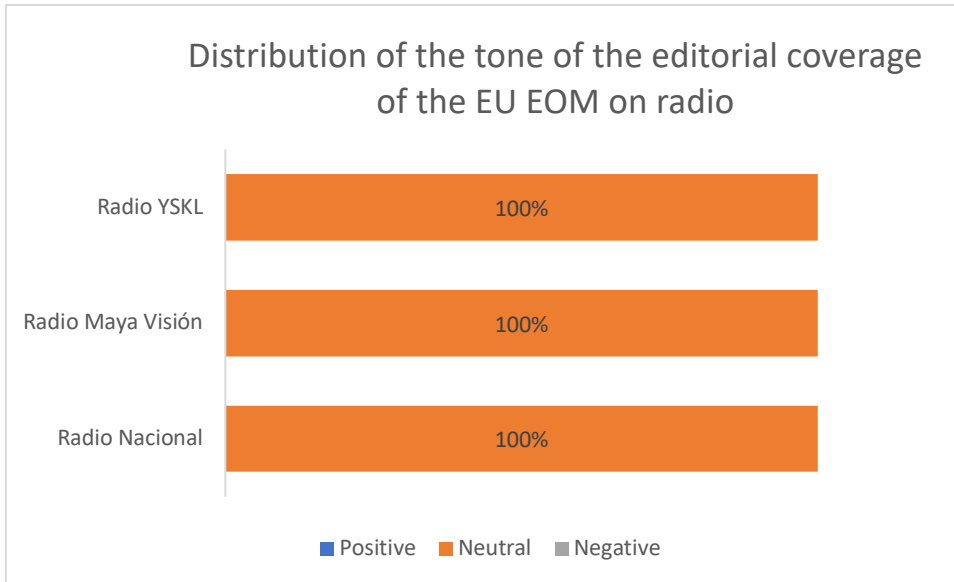
Base: 2,908 (seconds)



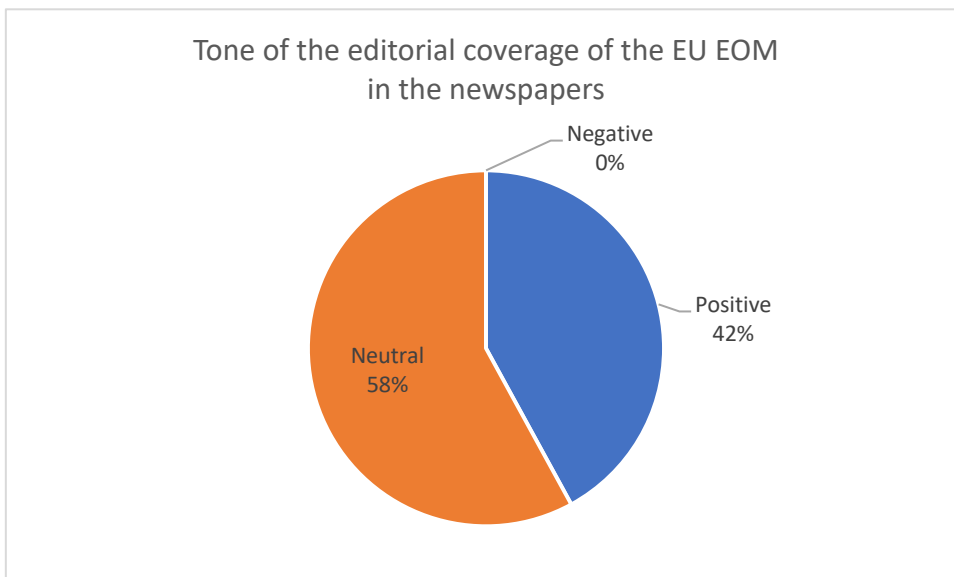
Base: 2,908 (seconds)



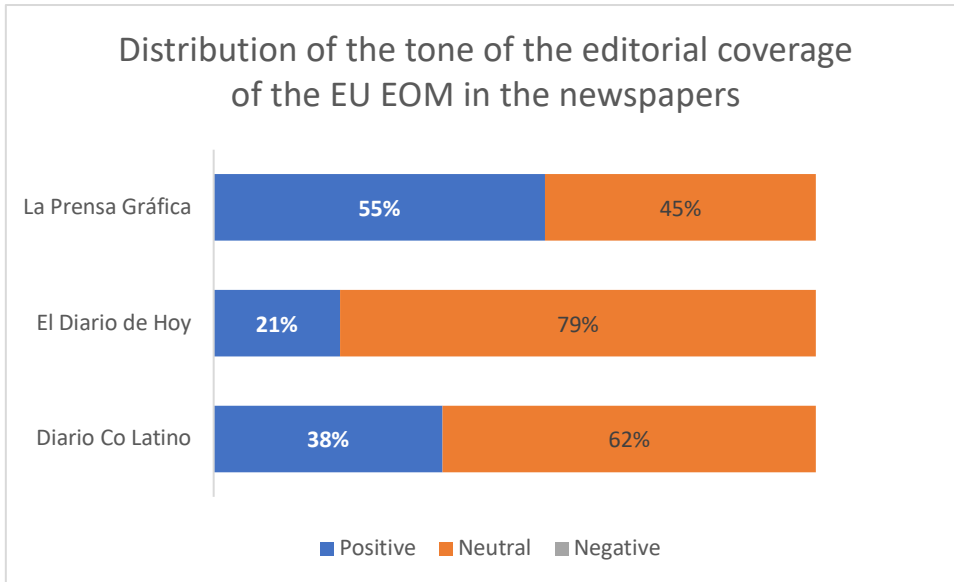
Base: 2,041 (seconds)



Base: 2,041 (seconds)



Base: 3,870 (square centimetres)



Base: 3,870 (square centimetres)

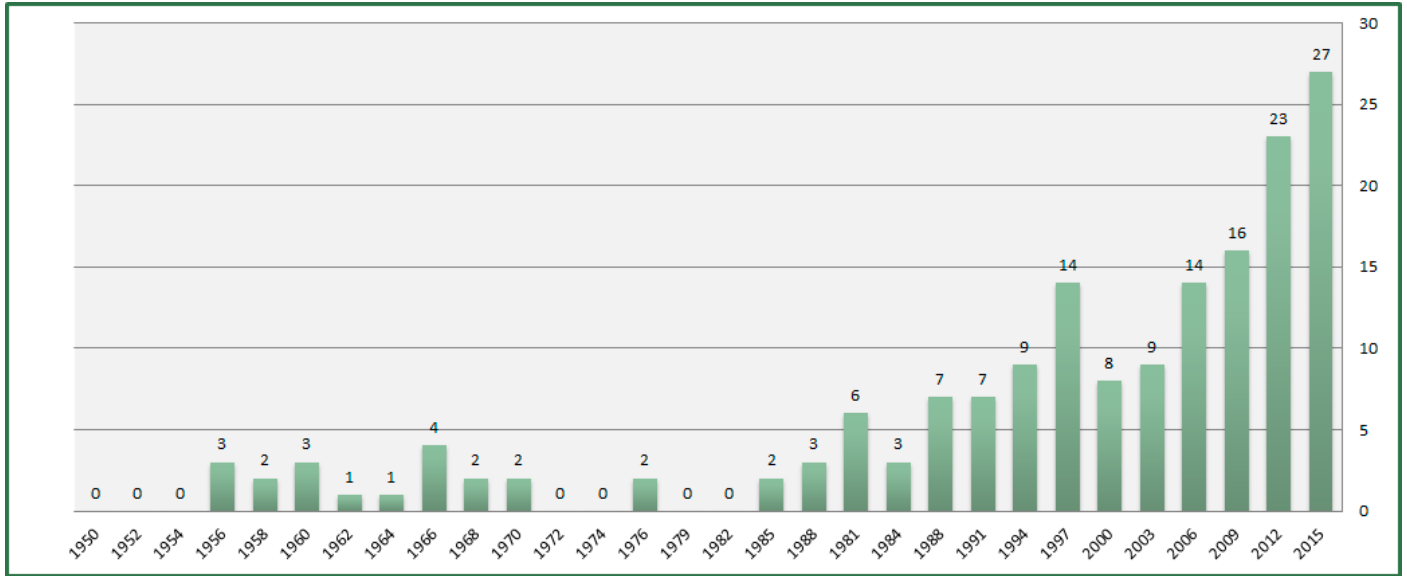
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ANNEX C:

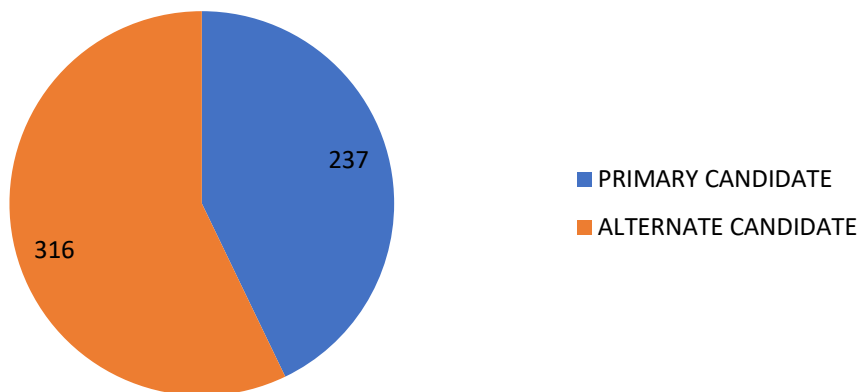
Elected Women Deputies from 1950-2015

Legislative Assembly El Salvador



Source: Observatory of Political Participation. Parliamentary Group of Women.

Women Candidates Legislative Assembly 2018-2021



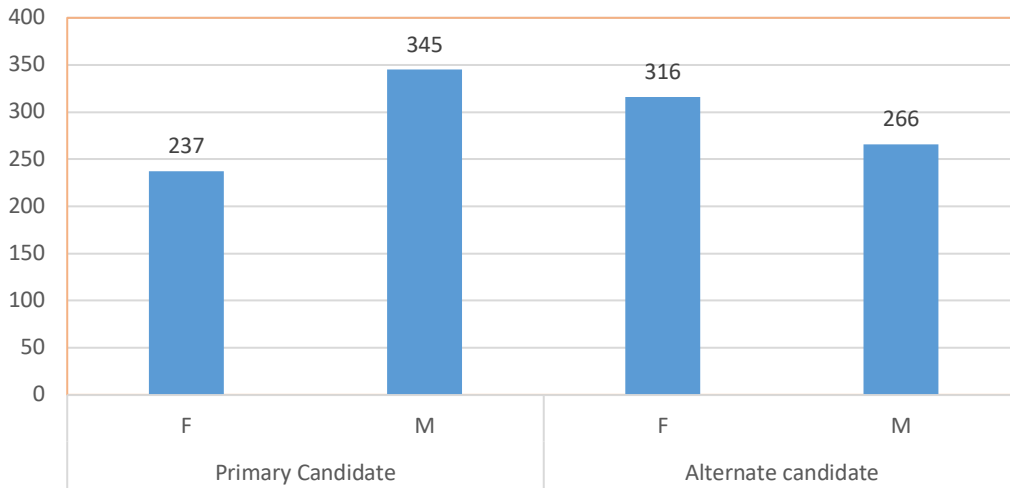
Note: The Political Parties Law establishes a participation quota for women, corresponding to 30% of all candidates.

Source: Information TSE.



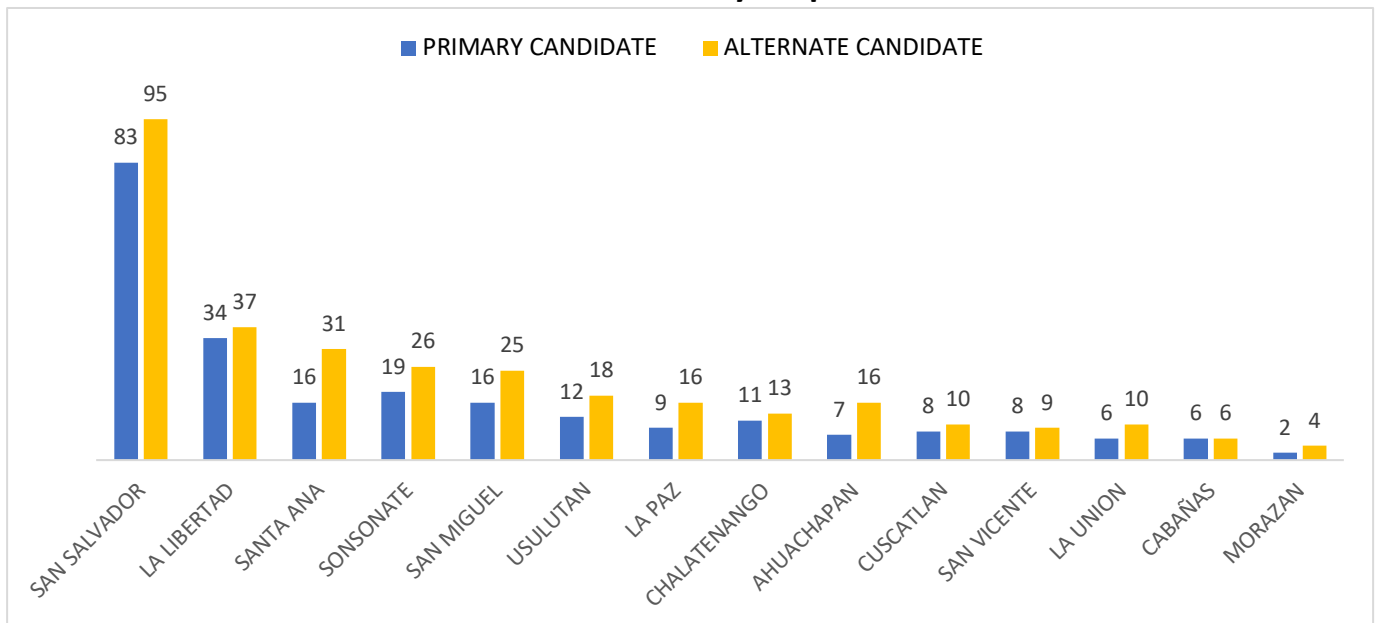
### Candidatures to the Legislative Assembly by Gender

Note: A total of 553 women and 611 men are candidates.



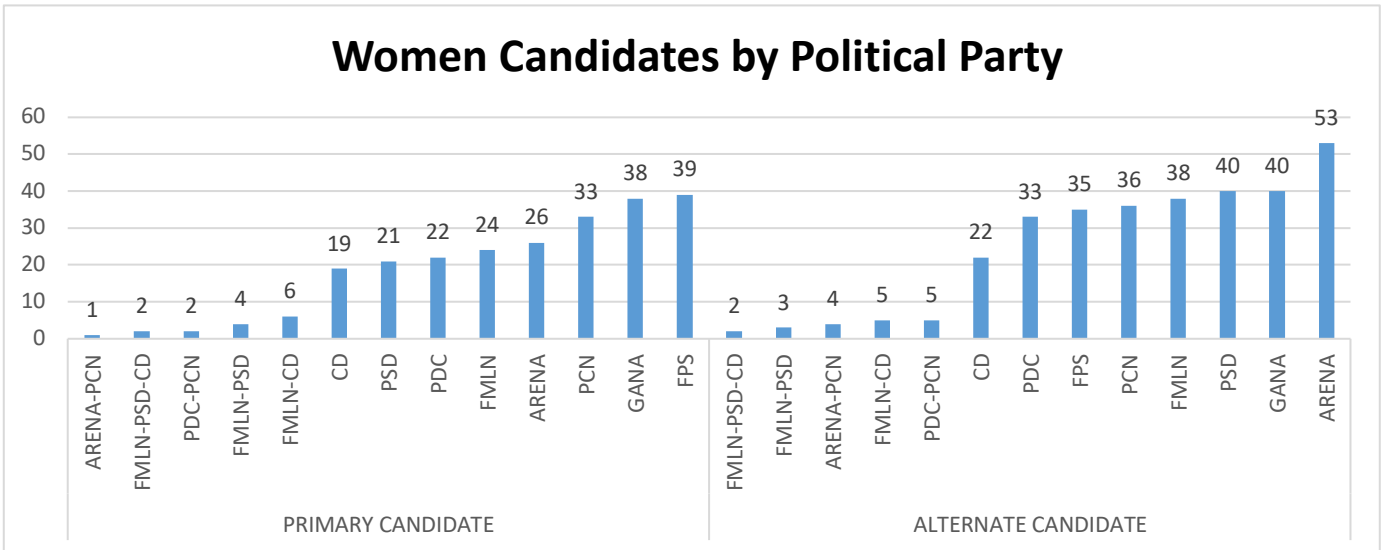
Source: Information TSE.

### Women Candidates by Department.

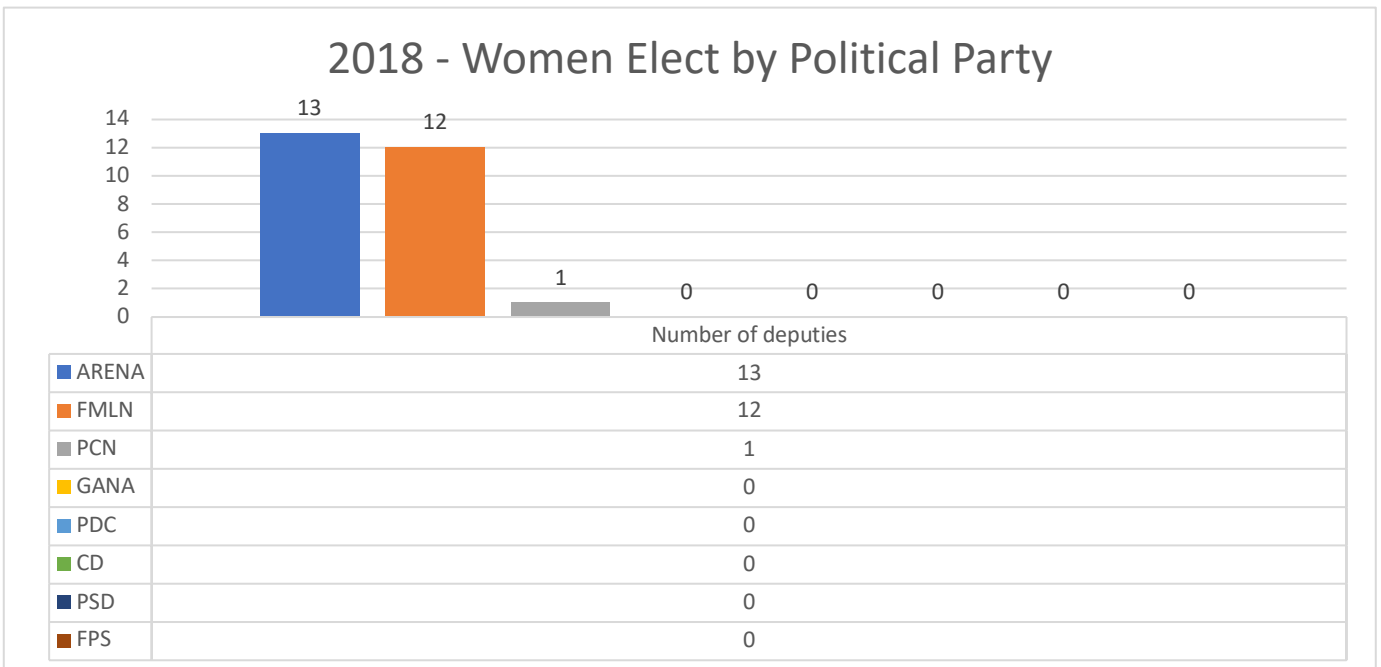


Source: Information TSE





Source: Information TSE



Source: Information TSE