



## **OAS Electoral Observation Mission Presents its Preliminary Report following the Second Round of the Elections in Brazil**

November 1, 2022

The Electoral Observation Mission of the Organization of American States (OAS/EOM), headed by Rubén Ramírez Lezcano, a former Foreign Minister of Paraguay, applauds the civic commitment of the Brazilian people who, as in the first round, went to the polls en masse to elect their representatives.

The Mission highlights the work of the Superior Electoral Court (TSE<sup>1</sup>), an institution that once again demonstrated its high level of professionalism and robustness, which allowed it to successfully conduct an electoral process in a complex context marked by polarization, disinformation, and attacks on electoral institutions. The Mission also notes the work of the Regional Electoral Courts (TREs<sup>2</sup>), judges, electoral officials, and polling station officials, all of whom contributed to the organization and conduct of these elections.

For the second round, the OAS/EOM comprised 56 members of 17 nationalities, whose staggered arrivals in the country began on October 22. On this occasion, the Mission was deployed in the Federal District and 15 states across Brazil's territory,<sup>3</sup> as well as in four cities abroad.<sup>4</sup> In the week leading up to the elections, the OAS/EOM met with representatives of the two presidential contenders' campaigns, as well as with electoral and government authorities, academics, and representatives of civil society. Those meetings allowed it to monitor the preparations for the election and to explore the country's different perspectives regarding the vote.

In total, over the first and second rounds, the OAS deployed 111 observers. The OAS/EOM specialists conducted analyses of key aspects of the electoral process, such as electoral organization and technology, political financing, the political participation of women, indigenous people, and Afro-descendants, campaigns and freedom of expression, overseas voting, political violence, and electoral justice.

### **PRE-ELECTORAL PHASE**

As occurred in the run-up to the first round, campaigning for these elections was marked by high levels of polarization. The Mission noted that the presidential contenders' public discourse was dominated by personal attacks, references to the candidates' past, and offensive messages. The OAS/EOM registered at least 80 cases in which the TSE ordered the suspension or removal of propaganda and messages with defamatory content or based on out-of-context or false information about different candidates and

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1 In Portuguese, TSE stands for Tribunal Superior Eleitoral

2 In Portuguese, TRE stands for Tribunal Regional Eleitoral

3 Amazonas, Bahía, Ceará, Goiás, Maranhão, Minas Gerais, Pará, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Sul, Santa Catarina, and São Paulo.

4 Paris, France; Porto, Portugal; and Washington DC and Miami, United States.



institutions.<sup>5</sup> The Mission regrets the aggressive tone of the campaigns and the failure of the debates and exchanges to focus on policy proposals. That notwithstanding, it applauds the fact that two presidential debates were held in the run-up to the second round.

Similarly, it should be noted that several of the actors and organizations with whom the Mission spoke once again expressed concerns about various acts of violence and intimidation that occurred following the start of campaigning.<sup>6</sup> The Mission reiterates its firmest rejection of any form of violence in the framework of a democracy.

In this regard, the OAS/EOM noted with concern the large number of complaints received by the Labor Prosecution Service (MPT<sup>7</sup>) regarding cases of electoral harassment<sup>8</sup> in which businessmen, public servants, and other authority figures allegedly tried to influence, intimidate, or coerce employees and subordinates into voting for a particular candidate. The Mission appreciates the joint efforts of the MPT and the electoral justice system to facilitate the reporting and investigation of harmful practices of this kind.

The Mission noted that after the results of the first round were published, some political actors criticized the opinion pollsters for having produced erroneous forecasts. As a result, a debate on the need to modify the regulatory framework for opinion polling was placed on the legislative agenda. Since this is a matter of great importance in the conduct of electoral campaigns, the Mission believes that any additional regulations must be subject to a broad debate that takes into account the opinions of all parties.

The Mission also learned that on October 24, 2022, the Coalition for the Good of Brazil and its candidate filed a remedy with the President of the TSE claiming that, according to an audit they had contracted, certain radio stations were not broadcasting their free electoral propaganda properly, which in their opinion constituted abuse of media power and fraud.<sup>9</sup> The complainants requested that the transmission of propaganda spots for the Brazil of Hope Coalition be suspended. On October 26, the President of the

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5 These data, covering the period from August 15 to October 28, 2022, were taken from the TSE's public consultation website: <https://consultaunificadapje.tse.jus.br/#/public/inicial/index>.

6 The Mission received reports from the Political and Electoral Violence Observatory of the Federal University of Rio de Janeiro about 103 politicians who were victims of violence following the start of campaigning, over the period from August 16 to September 25. The OAS/EOM also spoke with an advisor to congresswoman Duda Salabert, who stated that she had received repeated death threats since launching her campaign. The Mission also took note of several episodes of violence that were reported in the press: <https://monitoreamos.com/mundo/candidato-de-bolsonaro-a-governador-de-sao-paulo-tarcisio-gomes-denuncio-ataque-a-tiros>, <https://oglobo.globo.com/blogs/pulso/post/2022/09/pesquisadores-relatam-hostilidade-e-violencia-durante-levantamentos-de-opiniao-publica.ghml>, <https://www1.folha.uol.com.br/poder/2022/09/equipes-do-datafolha-sao-alvo-de-hostilidade-crescente-ao-fazer-pesquisa-eleitoral.shtml>, <https://www.redebrasilatual.com.br/politica/deputado-petista-alega-ter-sido-alvo-de-tiros-quando-fazia-campanha-em-montes-claros/>.

7 In Portuguese, MPT stands for Ministério Público do Trabalho

8 As of October 28, the MPT had reported on 2076 complaints. See: <https://www.prt21.mpt.mp.br/procuradorias/prt-natal>.

9 Administrative Process 0601696-47.2022.6.00.0000.

TSE rejected the filing,<sup>10</sup> stating that insufficient evidence had been presented and clarifying that the Court was not responsible for distributing electoral propaganda to the stations nor for monitoring the actual transmission of those spots.

The Mission also learned that on October 26, the TSE President sent an official letter to the Electoral Attorney General requesting that the complainants be investigated for the possible commission of electoral crime intended to disrupt the second round of the election. Representatives of the Coalition for the Good of Brazil's legal team with whom the OAS/EOM met expressed their disagreement with this decision.

As regards the content of the campaigns, the weeks prior to the election were once again marked by the massive dissemination of false information. Although the electoral authorities and civil society organizations both played a proactive role in combating disinformation, this remains a major challenge. The Mission is particularly concerned about the distribution of false and misleading information about the elections and unfounded attacks on the electoral system.<sup>11</sup>

Significantly, on October 20 the TSE unanimously approved a resolution to combat disinformation that could compromise the integrity of the electoral process.<sup>12</sup> Among other changes, this decision granted the Court powers to request, immediately and on an *ex officio* basis, the removal of propaganda or online messages that had already been ruled false; it also reduced the deadline for removing such content from 24 to 2 hours<sup>13</sup> and set fines of between 100,000 and 150,000 reais<sup>14</sup> per hour for digital platforms that failed to comply with the TSE's decisions. Some actors with whom the Mission spoke said that in their opinion, the new rules introduced by the TSE were necessary to effectively address the disinformation

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10 Available at: <https://consultaunificadapie.tse.jus.br/consulta-publica-unificada/documento?extensaoArquivo=text/html&path=tse/2022/10/26/19/26/40/adf63e755c34a6d92ef578938bfce5ca68a3285b56899c39e488145d7851bd6f>.

11 See: <https://www.justicaeleitoral.jus.br/fato-ou-boato/chechagens/urnas-filmadas-em-vale-do-anari-ro-eram-de-contingencia-e-foram-recolhidas-no-dia-seguinte-ao-da-eleicao>, <https://www.justicaeleitoral.jus.br/fato-ou-boato/chechagens/exercito-nao-interferiu-na-apuracao-dos-votos-no-primeiro-turno-eleicoes-2022>, <https://www.justicaeleitoral.jus.br/fato-ou-boato/chechagens/urna-nao-desbloqueia-candidato-secreto-se-eleitor-pressionar-as-teclas-5-branco-corrige>, <https://www.justicaeleitoral.jus.br/fato-ou-boato/chechagens/e-falso-que-boletins-de-urna-em-posse-de-eleitores-comprovam-que-votos-nao-foram-computados>, <https://www.justicaeleitoral.jus.br/fato-ou-boato/chechagens/e-falso-que-candidato-a-presidencia-perdeu-votos-na-totalizacao-apos-aplicativo-do-tse-travar>, <https://www.justicaeleitoral.jus.br/fato-ou-boato/chechagens/e-falsa-lista-de-cidades-nas-quais-numero-de-votos-em-candidato-a-presidencia-superou-a-populacao/#>.

12 See: [https://www.tse.jus.br/++theme++justica\\_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/arguivos/resolucao-desinformacao/@@download/file/TSE%20-%20Resoluc%CC%A7a%CC%83o%20-%20Desinformac%CC%A7a%CC%83o%20-%20aprovada.pdf](https://www.tse.jus.br/++theme++justica_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/arguivos/resolucao-desinformacao/@@download/file/TSE%20-%20Resoluc%CC%A7a%CC%83o%20-%20Desinformac%CC%A7a%CC%83o%20-%20aprovada.pdf).

13 During the period from 48 hours before polls open to 72 hours after the election.

14 Between US\$ 19,000 and US\$ 28,000, at the exchange rate in effect at the time of this report.



problem, while others stated that the resolution granted the electoral authority an excessive amount of power.

It should be noted that since the start of campaigning on August 15, representatives of the Coalition for the Good of Brazil repeatedly questioned the actions of the TSE and some of its members, as well as the security and integrity of the electronic voting system. At a meeting with the Mission, members of this coalition stated that they did not feel that the Court listened to their concerns.

For its part, the Brazil of Hope Coalition campaign expressed its repudiation of the permanent attacks on the institutional framework and the attempts to question the integrity of the electoral system. Campaign representatives also expressed concerns about the increased violence in this electoral process, the increase in fake news, the use of state resources for campaigning, and the consequent imbalances that this could create in the electoral process.

At a meeting with the Mission, the TSE President rejected the questioning of the electoral process's integrity and of the Court's actions, which he said were unfounded. He also underscored that Brazil's electronic voting system is equipped with a series of measures that guarantee the security and transparency of the process.

As noted by the OAS/EOM after the first round, since 2021 the Court has adopted a series of measures to further strengthen the transparency and security of the electoral process, including the creation of the Electoral Transparency Commission (CTE<sup>15</sup>) and expanding the scope of the electoral integrity test carried out on the voting machines.<sup>16</sup> The Mission appreciates the opening of new channels for different national institutions and actors to learn about and monitor the systems implemented by the electoral justice system. The Mission believes that although every electoral system can be improved, it is important that all actors behave with the utmost responsibility and direct their concerns through institutional channels.

The OAS/EOM also noted that in the days before the election, the Supreme Federal Court (STF<sup>17</sup>) ruled that public transportation services should be maintained at normal levels on election day,<sup>18</sup> and also authorized municipalities and concession operators in the country to offer the service free of charge.<sup>19</sup> It also prohibited municipalities that had already offered free transportation services for elections from

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15 In Portuguese, CTE stands for Comissão de Transparência das Eleições

16 From 100 voting machines to 641. This entails a test carried out on election day to check that the vote entered on a machine is exactly the same as the one counted on the machine's ballot report.

17 In Portuguese, STF stands for Superior Tribunal Federal (STF)

18 See: <https://portal.stf.jus.br/processos/downloadTexto.asp?id=5661726&ext=RTF>.

19 The decision states that the provision of free transportation cannot trigger electoral or misconduct punishments for public agents and concession operators. It also provides that any reduction in the provision of the service may lead to criminal liability. Decision available at: [ADPF1013DecisoMLRB.pdf \(stf.jus.br\)](#).

canceling those services. Likewise, on October 25, the TSE approved an administrative resolution establishing provisions in line with the STF's ruling.<sup>20</sup>

The day before the elections, a federal deputy filed a civil petition with the TSE reporting the alleged misuse of the Federal Police (PF) and the Federal Highway Police (PRF<sup>21</sup>) in favor of one candidate. In response, the TSE President prohibited the PRF from carrying out any operations related to the public transportation made available to voters on election day, and the PF from disclosing the results of its operations related to the electoral process until the end of the day.<sup>22</sup>

## ELECTION DAY

On election day, OAS observers visited 569 electoral sections<sup>23</sup> in 15 states<sup>24</sup> and the Federal District. They also monitored voting in four overseas cities: Paris, France; Porto, Portugal; and Washington DC and Miami, United States.

At the beginning of the day, the Mission reported that the electoral sections it visited had opened on time, at 8:00 a.m., after the zeroing certificates had been issued.<sup>25</sup> The OAS/EOM noted that the sections were predominantly staffed by the lead officials, and that in most cases it was women who served as station president. The OAS observers also reported that the polling places were suitable and were equipped with the materials necessary to conduct the election.

At the polling stations visited in Brazil, the voting process was seen to be more agile than in the first round. This was due, first, to the fact that there were fewer offices up for election (in some states, only the presidential vote took place) and second, to the fact that the instructions given by the TSE during the training of polling station members were effective in improving the voter flow. Abroad, at the start of the day in Porto and Paris, the Mission observed long lines of voters, both inside and outside the polling stations. As the day progressed, however, voting sped up.

As in the October 2 election, at some sections the Mission saw that there were difficulties in reading certain voters' fingerprints. At times this caused a degree of delay in the flow of voters; it did not prevent them from exercising their right to vote, however, since—as provided for in the pre-established

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20 See:

[https://www.tse.jus.br/++theme++justica\\_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/arquivos/resolucao-tse-transporte-coletivo-eleicoes-2022/@@download/file/TSE-resolucao-transporte-publico-coletivo-eleicoes-2022.pdf](https://www.tse.jus.br/++theme++justica_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/arquivos/resolucao-tse-transporte-coletivo-eleicoes-2022/@@download/file/TSE-resolucao-transporte-publico-coletivo-eleicoes-2022.pdf).

21 In Portuguese, PRF stands for Polícia Rodoviária Federal

22 Decision available at: <https://sedesc1-jud-01.tse.jus.br/mural-consulta-back-end/rest/publicacao/download/1595132>.

23 In Brazil the term “electoral section” refers to a polling station.

24 Amazonas, Bahía, Ceará, Federal District, Goiás, Maranhão, Minas Gerais, Pará, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Sul, Santa Catarina, and São Paulo.

25 In Brazil, a zeroing certificate (*zerésima*) is a document issued prior to the election that shows that no candidate has received votes prior to the start of the vote.



procedures—the presiding officers enabled the voting machine with their own fingerprints after verifying those persons’ identities in the voters’ register. According to official information from the TSE, of the total 472,075 voting machines installed across the nation, only 0.68% (3,235) required replacement, a lower percentage than observed during the first round.<sup>26</sup>

The Mission was apprised of several public complaints—in the media and on social networks—about alleged delays in voter travel in some areas of the country due to operations conducted by the Federal Highway Police (PRF) in which public buses were stopped and inspected or traffic was interrupted. At 3:30 p.m., the President of the TSE announced at a press conference that he had met with the Director of the PRF, who had told him that the operations had been carried out in accordance with the country’s Traffic Code and that in no case had the arrival of voters to the polling stations been impeded. The Court official also stated that the operations would be investigated and that the PRF Director had indicated that he would suspend those actions across the country. This situation fueled disquiet and concern since the security forces must facilitate the political right of citizens to vote freely and without intimidation.

The Mission noted that the rest of the day passed peacefully and without incident. At 5:00 p.m., the first official results in the presidential election were released. Three hours later, the TSE had received information from more than 95% of the country’s electoral sections. The OAS technicians saw that, as in the first round, the flow and consolidation of results worked correctly at all times. The Mission underscores that Brazil’s voting machines once again proved their efficiency by producing fast results, which were published without any upsets.

With 100% of the sections counted, the candidate Luiz Inácio “Lula” da Silva won with 50.9% of the votes. The Mission congratulates the president-elect and his running mate, Geraldo Alckmin, as well as the governors elected in Sunday’s vote. The Mission welcomes President Lula’s commitment to govern for all Brazilians in pursuit of national unity.

## **FINDINGS AND RECOMMENDATIONS**

The Mission would like to highlight that the TSE has followed up on the recommendations of past EOMs and has informed the Mission on its progress with their implementation. It also appreciates the openness shown by the electoral justice system to discuss all issues of interest to the work of the OAS/EOM, as well as its willingness to provide information to the Mission members deployed in the country.

Based on the meetings held with the different actors in this general election, its direct observations, and an analysis of the regulations in force, the OAS/EOM presents a series of comments and recommendations with the aim of continuing to strengthen Brazil’s electoral system and elections.

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<sup>26</sup> On that occasion, 0.78% of the machines had to be replaced.

## Electoral technology

The technological systems implemented by the TSE comprise several components, the most emblematic of which is the electronic ballot box or voting machine (*urna eletrônica*). Since 1996, when they were first used, there have been twelve models: from the UE 96 to the UE 2020.<sup>27</sup> With the introduction of the UE 2020, all models older than 13 years were retired. According to information provided by the TSE, there were 577,125 voting machines for this general election, of which 225,000 (39%) were the new 2020 model.<sup>28</sup>

During the run-up to the first round of the election, the Mission saw that a controversy arose regarding the voting machines. During different meetings with the OAS/EOM, TSE officials and technicians stressed that the electronic voting system in Brazil is equipped with a series of measures to ensure the security and transparency of the process, including pre- and post-election audits, source code auditing, digital signatures, publication of integrity codes and equipment sealing, physical sealing of machines, biometric voter identification, generation and recording of a log of events and transactions in each machine, and the Digital Vote Register. The officials further argued that the source code for the software was made available a year before the election and could be inspected on multiple occasions by different organizations. They also stressed that for this election, an increased number of organizations were able to audit the systems.

## System audit exercises

On September 8, 2021, the TSE created the Electoral Transparency Commission (CTE), composed of representatives from different institutions, including the Court of Accounts of the Union (TCU<sup>29</sup>), the National Congress, the Federal Police, the Electoral Attorney General's Office, the Federal Council of the Brazilian Bar Association (OAB), and the Armed Forces. It should be noted that the participation of the Armed Forces in election monitoring work is unprecedented both in Brazil and regionally. According to information received by the Mission,<sup>30</sup> the CTE suggested 44 measures to continue enhancing the transparency of the elections, of which 32 were totally or partially implemented, 11 will be studied in more detail for the next electoral cycle, and one was rejected.

In addition, as has been the case since 2009, the TSE carried out the Public Security Test (TPS). With this test, between November 22 and 26, 2021, specialists from universities and other public bodies were able

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27 Technical evolution of the electronic ballot box. Available at: <https://www.justicaeleitoral.jus.br/urna-eletronica/evolucoes.html>.

28 The other machines used were 96,000 EU 2015s, 30,000 EU 2013s, 35,000 EU 2011s, 118,000 EU 2010s, and 73,000 EU 2009s.

29 In Portuguese, TCU stands for Tribunal de Contas da União

30 Information available at: [https://www.tse.jus.br/++theme++justica\\_eleitoral/pdfs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/noticias/arquivos/quadro-resumo-das-contribuicoes/@@download/file/quadro-resumo-sugestoes-recebidas-da-comissao-de-transparencia-das-eleicoes.pdf](https://www.tse.jus.br/++theme++justica_eleitoral/pdfs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/noticias/arquivos/quadro-resumo-das-contribuicoes/@@download/file/quadro-resumo-sugestoes-recebidas-da-comissao-de-transparencia-das-eleicoes.pdf).

to review the voting machine technology. The Mission was informed that the EU 2020 electronic ballot box was not included in the TPS process, as its production did not begin until February 2022. For that reason, the electoral justice system signed an agreement for the University of São Paulo (USP) to carry out tests on this model as part of the CTE's work. According to the report from the USP's LARC laboratory, the EU 2020 test suite was more comprehensive than that of the TPS process and no vulnerabilities were found in the system's security.<sup>31</sup>

In addition, as part of the work carried out by CTE, the Federal University of Pernambuco (UFPE) and the State University of Campinas (Unicamp) conducted their own tests. The UFPE conducted a review of the voting machine source code and concluded that none of the studies carried out identified any problems that could compromise the software's operation.<sup>32</sup>

The Mission also noted that, as recommended by the OAS on previous occasions, the TSE decided to increase—from 100 to 641—the number of voting machines subjected to the Integrity Test (IT), the purpose of which is to verify that the vote entered in a machine is exactly the same as the one counted in the machine's ballot report (BU). This increase in sample size was implemented since the first round, on October 2. On the day before the election, electoral sections were randomly selected, and their voting machines were removed from the polling stations and taken to the TREs. There, on election day, the numeric codes of all the candidates were entered into the machines to show that all names could be voted for. The entire parallel voting procedure was filmed and conducted in the presence of external auditors, monitoring organizations, the press, and other stakeholders.<sup>33</sup>

It should be noted that, in previous elections, the conventional Integrity Test was conducted without the reading of biometric data. In response to a proposal from the Armed Forces, the TSE decided that 58 of the voting machines selected for the test would also be used to test this component of the system, and volunteer voters were asked to enable the machines with their biometric data.

During the TSE's meeting of October 6, the President of the Court reported that in the 641 machines that were tested during the first round, a coincidence rate of 100% was observed between the digital votes and those recorded on paper. He also noted that the IT results reaffirmed the efficiency of the voting

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31 EU 2020 Security Test Report, LARC-PCS-EPUSP-TSE, August 2022. Available at: <https://www.tse.jus.br/comunicacao/arquivos/resumo-executivo>.

32 Report on the Pilot Project for the Inspection of the Electronic Ballot Box Source Code at UFPE, Computing Center, Federal University of Pernambuco, August 2022. Available at: <https://www.tse.jus.br/comunicacao/arquivos/relatorio-unicamp>.

33 Audit and oversight events. Available at: <https://www.justicaeleitoral.jus.br/urna-eletronica/oportunidades-de-auditoria-e-fiscalizacao.html>.





machines and the electronic voting system and said that the complete reports would be published by the TSE on November 29, 2022.<sup>34</sup>

Regarding the verification of the integrity of the result transmission, counting, and publication systems, the TSE suggested that polling station presidents should themselves verify that the data in their section's ballot reports matched those subsequently published by the TSE. An agreement was also reached with the TCU whereby this institution could take a sample to verify the data from the machines' ballot reports. This exercise involved two parts. For the first, carried out on the day of the first round, a group of auditors collected 540 BUs (20 from each state and the Federal District) and checked that their data coincided with those published by the TSE. They reported, on election night itself, that no inconsistencies or irregularities had been found.<sup>35</sup> In the second part, which began after the first round, the TCU reviewed a larger sample of 4,161 ballot reports. On Saturday, October 29, it reported that it had again found no differences between the data in the reports and those published by the electoral authority.<sup>36</sup> All this information was made available to the public on the internet at <https://eleicoes.tcu.gov.br>. The Mission appreciates the implementation of these review and oversight mechanisms, which contribute to strengthening the system's transparency and public trust in it.

The Mission learned that, on the first round, the Armed Forces carried out their own checks at 385 polling stations. The Ministry of Defense has not yet issued a report, but it has announced that it will be made available after the second-round vote.

Based on what it observed throughout the electoral process, the Mission recommends:

- Ensuring the institutional continuity of the Electoral Transparency Commission, regulating its functions, and evaluating its optimal composition going forward.
- Institutionalizing the results verification exercises carried out by the Court of Accounts of the Union, in order to continue strengthening the system's transparency.
- Establishing, prior to the next electoral process, opportunities for different institutions and universities to conduct in-depth reviews of the most recent voting machine model.
- Formalizing processes for information security risk management, increased delivery plans, and awareness-raising regarding this topic.

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34 Superior Electoral Court, 2022 Election Integrity Test proves the efficiency of the voting machines, October 6, 2022. <https://www.tse.jus.br/comunicacao/noticias/2022/Outubro/teste-de-integridade-das-eleicoes-2022-comprova-eficiencia-dasurnas>.

35 *Folha de S. Paulo*, "TCU says that auditors found no irregularities at the electoral sessions visited," October 2, 2022. <https://www1.folha.uol.com.br/poder/2022/10/tcu-diz-que-audidores-nao-constataram-irregularidades-em-secoes-eleitorais-visitadas.shtml>.

36 <https://twitter.com/TCUoficial/status/1586733922997575681>.



- Developing a formal process for operational continuity management.

## **Electoral organization**

The Mission once again highlights the TSE's ability to successfully organize an election that, given the size of the country and of the electorate, was logistically complex: more than 156 million Brazilians were eligible to vote in this election, in races involving more than 26,000 candidates.<sup>37</sup> Significantly, there were no delays either at the start or conclusion of voting, and the polling stations were equipped with the materials and logistics necessary to allow all of Brazil's citizens to exercise their right to vote.

One of the notable aspects of the electoral authority's work is the training of polling station officials, which was offered through three different mechanisms: in person at electoral registration offices, on-line through the TSE's Distance Education site, and on-line through the *Mesário* cellphone application. The Mission emphasizes that, in preparation for the second round, the TSE expanded the training content with specific guidelines to streamline the flow of voting. Thanks to those efforts, and also because of the lower number of offices up for election, no long lines or crowds of voters were seen during the second round.

As on October 2, voting was carried out according to a uniform schedule across the country's territory. This measure helped the standardized, streamlined, and uninterrupted transmission of results.

## Overseas voting

Brazilians living abroad were able to vote in the presidential election. For the 2022 elections, 467 voting locations and 2,197 polling stations were set up outside Brazil: a steady increase since their first implementation in 2014, when there were 1,031 stations, and since 2018, when there were 1,970. Nevertheless, the OAS/EOM noted long lines at the overseas voting centers at the beginning of both days of the 2022 electoral process.

The Mission was also able to confirm that there has been a sustained increase in overseas voter registrations: 354,184 people registered in 2014; 500,727 in 2018; and 697,078 for this electoral process.<sup>38</sup> However, according to official data, it is estimated that 4,215,800 Brazilians reside abroad,<sup>39</sup> meaning that there are still significant numbers of citizens who, for whatever reason, have not registered. In addition, the OAS/EOM learned that only 18.6% of overseas voters were biometrically registered, compared to 75.5% within the country's borders.<sup>40</sup>

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37 See: <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-candidaturas/home?session=12233923068499>.

38 See: <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-eleicao>.

39 Ministry of Foreign Affairs, study available at: <https://www.gov.br/mre/pt-br/assuntos/portal-consular/arquivos/ComunidadeBrasileira2020.pdf>.

40 "Information and statistics on the 2022 elections," report published by the TSE (September 29, 2022), p. 31.

Finally, the OAS/EOM learned that for the second round, the electoral justice system, with support from the Ministry of Foreign Affairs, sent 96 voting machines to replace those that had reported problems in the first round, and that it increased the number of backup voting machines to 126. Similarly, 70 officials from the electoral authority were sent abroad to support the work of those polling stations that reported long lines and the highest number of complaints during the first round.<sup>41</sup>

Accordingly, the Mission highlights the efforts of the TSE and the Ministry of Foreign Affairs to improve overseas voting and recommends:

- Increasing the number of polling stations available, including the use of additional locations in addition to consular offices.
- Implementation by the TSE of a broad outreach campaign, with the support of the Brazilian consular network, in order to publicize the mechanisms that exist for overseas voter registration.
- Continuing efforts for the biometric registration of overseas voters.

## **Disinformation and freedom of expression**

The mass dissemination of false information is one of the most complex challenges facing the Brazilian elections system, as the OAS missions pointed out in 2018 and 2020. Although the electoral authorities, the press, civil society organizations, and digital platforms have undertaken major initiatives to counteract disinformation at election time, it still poses a great challenge.

In 2022, the spread, scale, and speed of disinformation increased considerably.<sup>42</sup> According to the TSE, the number of complaints received about this phenomenon grew by 1,671% compared to the 2020 elections.<sup>43</sup> Of particular concern to the Mission was the high circulation of false or misleading information about the elections and unfounded attacks on the electoral system, as well as information that could constitute an incitement to hatred and violence. The Mission again states that disinformation aimed at undermining the legitimacy and credibility of electoral processes, generating confusion about the voting processes, or promoting violence poses a serious risk to the region's democracies.

In this regard, the Mission notes that the TSE made efforts to protect the integrity of the electoral process and to combat disinformation during the elections. The Mission highlights the creation, on a permanent basis, of the Program to Confront Disinformation, which seeks to combat the negative effects of this phenomenon on the credibility of the electoral justice system;<sup>44</sup> the creation of the National Front against Disinformation (FRENTE), through which officials from the electoral justice system voluntarily participate

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41 According to statements made by the President of the TSE at a press conference on October 30, 2022.

42 Superior Electoral Court, Summary, Resolution No. 23,714, p. 3.

43 According to: TSE, Summary, Resolution No. 23,714, p. 3.

44 Superior Electoral Court, Office of the President, TSE Ordinance No. 510, August 4, 2021.

in actions against the dissemination of false information; and the creation of the Election Disinformation Alert System.<sup>45</sup>

The OAS/EOM also appreciates the TSE's efforts to bolster a multisectoral approach in the fight against disinformation, as can be seen in the signing of cooperation agreements with more than 150 entities representing academia, the business sector (including digital platforms), civil society, and the media.<sup>46</sup> These actions are in line with the recommendations made by the OAS/EOM and set an example for the region.

The Mission noted that in 2021, the TSE prohibited the dissemination of knowingly false or seriously out-of-context allegations that could affect the integrity of the electoral process, including the casting of votes and their counting and tallying. This required that the Electoral Court, at the petition of the Public Prosecution Service, must order the cessation of the illicit acts, without prejudice to the opening of an investigation for criminal liability, abuse of power, and abuse of the media.<sup>47</sup> Ten days before the 2022 runoff, the TSE unanimously repealed this rule<sup>48</sup> and established new regulations, approved on October 20,<sup>49</sup> to address the spread of disinformation during the second round.

The new regulations state that when the TSE detects disinformation that could affect the electoral system's integrity, it will order the platforms to remove it immediately under penalty of a fine (ranging from 100,000 to 150,000 reais for each hour of non-compliance).<sup>50</sup> They also provide that following the Court's decision to order the removal of content of that type, the TSE President may extend the decision to cover identical content elsewhere. The resolution authorizes the temporary suspension of social network profiles, accounts, or channels that repeatedly publish false or out-of-context information, as well as the suspension of access to the platform's services in the event of repeated non-compliance with the TSE's decisions, for up to a maximum period of 24 hours.<sup>51</sup>

On October 21, the office of the Attorney General of the Republic (PGR) filed a direct unconstitutionality action with the Federal Supreme Court (STF) against the resolution, requesting the suspension of its effects. The PGR held that several of the resolutions' articles were unconstitutional and that they violated the principle of legality and legislative competence in electoral matters, the right to freedom of expression, and the principle of proportionality.<sup>52</sup> In a decision dated October 24, the STF rejected the

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45 See: <https://www.tse.jus.br/eleicoes/eleicoes-2022/sistema-de-alerta>.

46 See: <https://www.tse.jus.br/comunicacao/noticias/2022/Julho/programa-de-enfrentamento-a-desinformacao-do-tse-tem-mais-de-150-parcerias-659181?SearchableText=Sistema%20de%20Alerta>.

47 Superior Electoral Court, Resolution No. 23,671, December 14, 2021, Article 9A.

48 Superior Electoral Court, Resolution No. 23,714, October 20, 2022, Article 8.

49 Superior Electoral Court, Resolution No. 23,714, October 20, 2022.

50 Between around US\$ 19,000 and US\$ 28,000, according to the exchange rate in force on October 30, 2022.

51 Superior Electoral Court, Resolution No. 23,714, October 20, 2022, Articles 4 and 5.

52 Office of the Attorney General of the Republic, Initial Petition AJCONST/PGR No. 743894/2022.

filing by a majority vote, finding that the TSE had acted within its constitutional competence and its power of policing.<sup>53</sup> It ruled that the measure was necessary to ensure the TSE's competence in dealing with the phenomenon of disinformation and its electoral impact, and it found that the resolution did not violate the right to freedom of expression. According to the information provided by the TSE, under the terms of this resolution the Court ordered the removal of 354 paid advertisements from the internet, the demonetization of seven web pages, the removal of 701 URLs, the suspension of 15 profiles considered “major spreaders” of fake news, and the suspension of five Telegram groups that together had 580,000 participants.<sup>54</sup>

The OAS/EOM also found that during the second round, the TSE resolved dozens of complaints lodged by parties and presidential candidates that alleged the dissemination of irregular propaganda and campaigns with false and defamatory content. Some of the TSE's decisions ordered media outlets to remove content found in breach of the law.<sup>55</sup> Likewise, the TSE prohibited the launch and broadcasting of a documentary during the week prior to the second round, in order to avoid the dissemination of possible fake and defamatory news and to reduce its possible impact on the equality of the presidential race.<sup>56</sup>

The inter-American system assigns fundamental importance to freedom of expression for the preservation of democracy and the enjoyment of all other human rights. The Inter-American Court of Human Rights has recognized that the right to freedom of expression, protected by Article 13 of the American Convention on Human Rights, constitutes a fundamental bastion for debate during electoral processes, that it is indispensable for the formation of voters' opinions, and that it is a *conditio sine qua non* in allowing political parties and candidates—and all those seeking to influence the community—to express themselves fully.<sup>57</sup> In its decisions, the Inter-American Court has recognized that Article 13 provides special protection for expressing ideas on matters of public interest—even more so at election time—and gives very little leeway for restricting criticisms of public officials, political leaders, and other public figures, or for limiting the freedom of the press.<sup>58</sup>

This does not mean that disinformation in the context of political and electoral discourse cannot be restricted or sanctioned. The inter-American system has recognized that electoral law can develop specific responses to address disinformation in this context, but it has emphasized that any regulation affecting freedom of expression must satisfy the peremptory requirements of legality, necessity, and

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53 Federal Supreme Court, ADI 7261.

54 Information provided by the TSE President at a press conference on October 30, 2022, including details of the actions ordered by the TSE over the previous 36 hours.

55 See: TSE, Right of Reply/Statement of Claims, No. 0600922-17.2022.6.00.0000, Brasilia, October 17, 2022.

56 TSE, AIJE (11527) No. 0601522-38.2022.6.00.0000 (PJe), Brasilia, October 18, 2022.

57 *Case of Ricardo Canese v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 31, 2004, Series C No. 111, para. 88.

58 *Case of Palacio Urrutia et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of November 24, 2021, Series C No. 446; and *Case of Álvarez Ramos v. Venezuela*, Judgment of August 30, 2019, Series C No. 380.

proportionality and must take due account of the high threshold of protection afforded to discourse of public interest and political debate.<sup>59</sup> The existence of a clear and robust legal framework against disinformation in electoral matters guarantees legal certainty and bolsters the effectiveness of the responses given by all parties involved.

The OAS/EOM again stresses the key role to be played by civil society, the media, and news verification agencies in monitoring and identifying disinformation, issuing timely alerts, and countering it. Civil society organizations told the Mission of their concerns regarding the proliferation of disinformation and intimidating and discriminatory messages (online and offline) against journalists covering the electoral campaign, particularly women journalists.<sup>60</sup>

The Mission also noted that in recent years, several social networks and messaging applications operating in Brazil have adopted policies to ensure civic and electoral integrity and to combat disinformation.<sup>61</sup> In addition, the Mission noted that several platforms announced measures to help ensure safer digital venues and provide reliable information on the electoral process in Brazil,<sup>62</sup> including digital literacy actions, the promotion of reliable sources, and the removal of content.<sup>63</sup> Despite these efforts, several experts with whom the Mission spoke indicated that the platforms continued to be used to spread disinformation and that the measures adopted by the companies were insufficient.

During the campaign, political actors also contributed to the spread of polarizing rhetoric and disinformation. Candidates and their parties have a legal obligation to provide the electorate with reliable information and not contribute to misinformation.<sup>64</sup> They must also refrain from disseminating disinformation that could incite intolerance, hatred, or violence.<sup>65</sup> The Mission echoes the Joint Declaration on Freedom of Expression and “Fake News,” Disinformation, and Propaganda, which provides that state actors should not make, endorse, encourage, or spread statements that they know—or reasonably should know—to be false or that show a manifest disregard for verifiable information.<sup>66</sup>

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59 IACHR, Office of the Special Rapporteur for Freedom of Expression, [Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts](#) (2019). See also: United Nations Special Rapporteur on Freedom of Opinion and Expression, A/HRC/47/25, para. 42.

60 See: <https://abraj.org.br/noticias/ataques-contra-mulheres-jornalistas-crescem-250-em-setembro>; <https://rsf.org/pt-br/elei%C3%A7%C3%B5es-no-brasil-movimento-coordenado-de-agress%C3%B5es-%C3%A0-imprensa-se-consolida-na-campanha>.

61 See: [Policies on election disinformation](#) from YouTube, and the [Civic Integrity Policy](#) from Twitter.

62 See: <https://www.facebook.com/gpa/brazil2022>; <https://newsroom.tiktok.com/pt-br/tiktok-fecha-parceria-com-tse-e-traz-recursos-no-aplicativo>.

63 See: <https://www.justicaeleitoral.jus.br/desinformacao/#desinformacao-parceiros>.

64 TSE, Resolution No. 23.610/2019, Article 9.

65 2021 Joint Declaration on Political Leaders, Public Officials, and Freedom of Expression, October 20, 2021: [https://www.ohchr.org/sites/default/files/2022-04/Joint-Declaration-2021-Politicians\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-04/Joint-Declaration-2021-Politicians_EN.pdf).

66 Joint Declaration on Freedom of Expression and “Fake News,” Disinformation, and Propaganda, <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1056&IID=2>.

With a view to future electoral processes, the Mission recommends:

- Continuing to strengthen measures to combat disinformation and manage the outreach of the electoral justice system from a comprehensive and multisectoral perspective, and increasing the human and financial resources needed to fulfill this task.
- Strengthening civic education and media and digital literacy actions to raise awareness and build the population's ability to recognize disinformation and to avoid consuming and spreading it.
- Undertaking a legal reform process, with the broadest possible consultation of stakeholders and experts, in order to provide the electoral justice system with suitable and effective tools for combating disinformation in accordance with constitutional principles and inter-American human rights standards.

## Electoral violence and security

Various actors and organizations with whom the OAS/EOM met stated that the deepening polarization that characterized this electoral process had bolstered discourse promoting intolerance, discrimination, and violence on social networks.<sup>67</sup> Some candidates with whom the Mission spoke during the process expressed their fear of identifying themselves with party emblems during the campaign.

The OAS/EOM received reports from civil society on 103 politicians who were victims of violence since the start of the electoral campaign,<sup>68</sup> as well as on 14 cases of political/partisan violence and 11 cases of aggression due to political intolerance against LGBT+ candidates.<sup>69</sup> At least two candidates reported being targeted by gunfire while campaigning.<sup>70</sup> In addition, through the press, the Mission learned that three people died in the context of cases reported as incidents produced by political intolerance;<sup>71</sup> it also heard reports of acts of violence against pollsters during the electoral period.<sup>72</sup> The OAS/EOM was apprised of one incident, the day before the elections, in which a federal deputy pulled out a gun during a political

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67 See: <https://internetlab.org.br/pt/noticias/louca-doida-e-maluca-misoginia-domina-ofensas-a-candidatas-nessas-eleicoes/>; <https://www1.folha.uol.com.br/poder/2022/10/eleitores-do-nordeste-sofrem-ataques-criminosos-apos-votacao-em-massa-em-lula.shtml>.

68 Political and Electoral Violence Observatory, Electoral Research Group, Federal University of Rio de Janeiro. Figures for the period August 16 to September 25.

69 Preliminary monitoring shared with the Mission by the VOTE LGBT+ organization.

70 See: <https://monitoreamos.com/mundo/candidato-de-bolsonaro-a-governador-de-sao-paulo-tarcisio-gomes-denuncio-ataque-a-tiros>; <https://www.redebrasilatual.com.br/politica/deputado-petista-alega-ter-sido-alvo-de-tiros-quando-fazia-campanha-em-montes-claros/>.

71 See: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2022/07/10/saiba-quem-era-marcelo-arruda-guarda-municipal-morto-por-bolsonarista.htm>; <https://agenciabrasil.ebc.com.br/justica/noticia/2022-09/justica-decreta-prisao-de-acusado-de-homicidio-por-motivacao-politica>; <https://revistaforum.com.br/brasil/2022/9/27/homem-que-assassinou-eleitor-de-lula-com-facada-presos-no-ceara-123928.html>.

72 <https://oglobo.globo.com/blogs/pulso/post/2022/09/pesquisadores-relatam-hostilidade-e-violencia-durante-levantamentos-de-opiniao-publica.ghtml>.

discussion.<sup>73</sup> However, the Mission found that there are no consolidated official data or statistics on reports or episodes of violence during the electoral process.

In the legislative arena, and in line with the recommendations made in 2020, the OAS/EOM took positive note of the inclusion in the Criminal Code of a definition of political violence as “any action aimed at restricting, preventing, or hindering the exercise of political rights of any person using physical, sexual, or psychological violence,”<sup>74</sup> and of the enactment of a law that establishes rules to prevent and combat political violence against women.<sup>75</sup>

In this context, the Mission noted with satisfaction the TSE’s creation and conduction of campaigns, such as #PazNasEleições (“Peace during the elections”), to spread messages about the peaceful nature that should characterize democratic processes. Additionally, it noted that the TSE justices unanimously agreed to impose restrictions on the carrying of firearms and ammunition, in particular within a radius of 100 meters around polling stations, and, in general, to limit the bearing of arms by hunters, collectors, and shooters across the country on election day, the day before, and the day after. In accordance with the Court’s ruling, failure to comply with this prohibition would result in imprisonment.<sup>76</sup>

During the second round in particular, the OAS/EOM noted a significant uptick in complaints related to electoral harassment: that is, the workplace practice of coercing, threatening, or promising benefits to employees if they vote—or do not vote—for a particular candidate. Two days before the second round, the Labor Prosecution Service (MTP) had received a total of 2,076 complaints,<sup>77</sup> almost ten times more than those received during the 2018 elections. In view of this, as was noted by the Mission, the TSE and the MTP agreed on joint actions to provide channels for reporting complaints and to raise public awareness that threats and restrictions in the workplace related to voting intentions may constitute an electoral crime.<sup>78</sup> The Mission rejects the practice of electoral harassment and again underscores the importance of guaranteeing all citizens free and secret suffrage, absent any kind of pressure.

During the 2022 electoral process, the Mission noted joint initiatives undertaken by Brazilian institutions to coordinate decision-making in dealing with political violence. Particularly noteworthy in this regard was the creation of the Working Group to Confront Political Violence, involving the TSE and the Military Police of the nation’s states. The Mission also learned of the National Council of Justice’s creation in September

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73 <https://www.cnnbrasil.com.br/politica/seguranca-de-zambelli-e-presos-por-disparar-arma-de-fogo-paga-fianca-e-e-solto/>; [https://twitter.com/Metropoles/status/1586472400379871232?t=Eb7UD7G2ab3V\\_aBrwHkfJQ&s=08](https://twitter.com/Metropoles/status/1586472400379871232?t=Eb7UD7G2ab3V_aBrwHkfJQ&s=08).

74 Law 14.197/2021, Article 2A, adding Article 359-P to the Criminal Code.

75 Law 14.192/2021.

76 See: <https://www.tse.jus.br/comunicacao/noticias/2022/Setembro/transporte-de-armas-e-municoes-sera-proibido-no-dia-das-eleicoes-um-dia-antes-e-um-dia-depois>.

77 See: <https://www.prt21.mpt.mp.br/procuradorias/prt-natal>.

78 See: <https://www.tse.jus.br/comunicacao/noticias/2022/Outubro/tse-deve-auxiliar-ministerio-publico-no-enfrentamento-ao-assedio-eleitoral-durante-as-eleicoes>; <https://www.tse.jus.br/comunicacao/noticias/2022/Outubro/mensagem-do-tse-reforca-que-e-crime-qualquer-forma-de-coacao-a-trabalhadores-para-votar-em-candidatos>.



2022 of specific criminal courts to hear cases of political and partisan violence.<sup>79</sup> At the same time, it noted that there is no candidate protection plan or system in place, except for those candidates competing for the presidency.

In order to address these problems and the impact they could have on the exercise of political and electoral rights, the Mission recommends:

- Creating a public register of accurate data on political violence, to allow the documentation and identification of its causes and to ensure the timely reporting and response to such episodes.
- Creating mechanisms for the protection of voters and candidates who are subject to threats.
- Strengthening the working groups charged with examining and coordinating measures against political violence in the medium term, beyond the immediate dates of electoral periods.

## Electoral justice

### Electoral regulations

As noted by the 2020 Mission, Brazil has a thorough and robust set of electoral regulations, but they are spread across a number of instruments: the Constitution, the Electoral Code, the Election Law, the Political Parties Law, and the various resolutions issued by the TSE in discharging its functions. This dispersion makes it difficult for the actors participating in the contest—and the public in general—to get a full grasp of the rules that apply to the electoral process.

To address this problem, in 2019 the TSE created the Working Group for the Systematization of Electoral Rules (SNE), in order to review the rules and jurisprudential guidelines and ensure their coherence. The Mission noted that the SNE has been working on annotated editions of the rules to identify the legislation in force and their most recent interpretations by the courts. In addition, the OAS/EOM was informed that at least one political party has presented an initiative to consolidate all the electoral regulations into a single electoral code.<sup>80</sup> This initiative, however, does not build on the progress already made by the SNE.

With a view to future electoral processes, the Mission recommends:

- Collating the electoral rules into a single instrument, based on the proposals presented to date by different voices within Brazilian society and taking into account the technical opinions of the TSE and its working group.<sup>81</sup>

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79 See: <https://www.tre-pe.jus.br/comunicacao/noticias/2022/Setembro/corregedoria-do-cnj-cria-regras-para-tribunais-e-magistratura-no-periodo-eleitoral>.

80 [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?codteor=2050061](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2050061).

81 Use could be made of the Wikilegis platform: <https://edemocracia.camara.leg.br/wikilegis/>.

## Registration and verification of candidacies

According to the electoral calendar, the deadline for the registration of candidacies for the general election was August 15<sup>82</sup> and the campaign start date was August 16.<sup>83</sup> Therefore, as in previous processes, the electoral justice system was required to assess the eligibility of candidates when campaigning was already underway.

The Mission also noted that some candidacies were rejected only days before the first round<sup>84</sup> and that, on voting day, more than 700 candidacies were still pending a final decision.<sup>85</sup> The Mission once again warns that this lack of certainty regarding candidates affects both those who intend to compete in the election and the electorate, who may find themselves in the situation of voting for someone about whose eligibility they are unsure.

As in 2018 and 2020, the Mission recommends:

- Redefining the deadlines set in the regulations for the registration and verification of candidacies. In this regard, it is suggested that the judicial oversight be carried out before campaigning starts, sufficiently in advance thereof so that any challenges that may arise can be resolved in time.
- Reviewing the grounds for candidates' ineligibility and disqualification provided for in current legislation, in line with the criteria for the restriction of political rights established by the Inter-American Court of Human Rights.<sup>86</sup>

## **Political financing**

Brazilian law provides for a mixed financing system that combines funds from both public and private sources. Public funding comprises the Party Fund,<sup>87</sup> which is intended to cover the operating expenses of

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82 <https://www.tse.jus.br/comunicacao/noticias/2022/Agosto/termina-nesta-segunda-15-prazo-para-registro-de-candidaturas>.

83 <https://www.tse.jus.br/comunicacao/noticias/2022/Agosto/eleicoes-2022-propaganda-eleitoral-esta-liberada-a-partir-de-hoje-16>.

84 <https://www.tse.jus.br/comunicacao/noticias/2022/Setembro/plenario-nega-registro-de-candidato-ao-senado-pelo-mato-grosso>, <https://www.tse.jus.br/comunicacao/noticias/2022/Setembro/tse-nega-registro-a-dois-candidatos-a-deputado-federal-no-df>.

85 <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-eleicao-processual/home?session=5144368280788>.

86 The Inter-American Court's jurisprudence has established that a right may be restricted by states as long as the interference is not abusive or arbitrary; limitations must therefore be provided for by law in a material and formal sense, pursue a legitimate purpose, and meet the requirements of suitability, necessity, and proportionality. Cf: Advisory Opinion OC-6/86, *supra*, paras. 35 and 37; and *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2012, Series C No. 257, para. 273. Cf: *Case of Tristán Donoso v. Panama*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of January 27, 2009, Series C No. 193, para. 56; and *Case of Fernández Prieto and Tumbreiro v. Argentina*, Merits and Reparations, Judgment of September 1, 2020, Series C No. 411, para. 105.

87 Law on Political Parties, Article 38.

political organizations, and the Special Campaign Finance Fund (FEFC),<sup>88</sup> used for electoral expenses. The indirect public financing provided for by the Brazilian legal system entails free electoral propaganda on radio and television.<sup>89</sup>

Since 2017, when the FEFC was created to compensate the parties after the STF banned corporate donations,<sup>90</sup> the system has become mostly public. Thus, in this election, 89% of the funds reported by the parties were provided by the Brazilian State.<sup>91</sup> It should be noted that the criteria for the distribution of public funds are based on electoral strength,<sup>92</sup> which favors the more consolidated parties.

The OAS/EOM noted that since 2018,<sup>93</sup> FEFC disbursements have increased by 188%.<sup>94</sup> The Mission holds that public financing is essential to avoid imbalances in campaigns. Given that level of exponential growth, a proportional strengthening of the mechanisms for inspection and oversight of those public funds should be expected; however, this has not occurred.

The Mission saw that, with the exception of funds reserved for women and Afro-descendent candidates, the criteria for resources distribution remain a matter for internal party decisions. As previous EOMs have pointed out, this model does not guarantee the equitable use of funds.

For accounting purposes, all candidates must report donations received no later than 72 hours after the transaction and file a partial financial report prior to the election and a final report once voting has concluded. The Mission acknowledges the value of the various technological tools made available by the TSE to facilitate the oversight of accounts and to allow citizens access to this information.<sup>95</sup> The Mission notes, however, that the oversight model continues to suffer from significant difficulties. This is because the financial, technological, and human resources available to the electoral authorities for auditing are insufficient, particularly in light of the increase in the volume of resources allocated to campaigns.

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88 Law No. 13.487/2017.

89 Elections Law, Article 44.

90 Direct Unconstitutionality Action (ADI) 4650, Federal Supreme Court.

91 As of October 28, 2022. Available at: <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-prestacao-contas/receitas-despesas?session=4742613597438>.

92 Taking the two funds together—the Party Fund and the Special Campaign Finance Fund—96.5% of the total resources are distributed according to the electoral strength criterion.

93 First year in which the election fund was distributed.

94 From R\$ 1,716,209,431 in 2018 to R\$ 4,961,519,777. See: [https://www.tse.jus.br/++theme++justica\\_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/noticias/arquivos/calculo-do-montante-do-fehc-para-as-eleicoes-2022/@download/file/TSE-calculo-distribuicao-fehc-eleicoes-2022.pdf](https://www.tse.jus.br/++theme++justica_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/noticias/arquivos/calculo-do-montante-do-fehc-para-as-eleicoes-2022/@download/file/TSE-calculo-distribuicao-fehc-eleicoes-2022.pdf).

95 Notably: the Electoral Accountability System (EAS), the public consultation of accountability documents, the Accounts Information System (SICO), DivulgaCandContas, DivulgaSPCA, Campaign Information (IDC), the Electronic Judicial Process (eJP), the TSE's Open Data Portal, the PARDAL system, and others.

Statistics provided by the Electoral Justice Intelligence Unit<sup>96</sup> provide evidence that irregularities in party accounts have increased along with the increase in public funding.<sup>97</sup> This partly explains the delays in verifying the accounts of previous electoral processes.<sup>98</sup>

As regards the sanctions imposed, the legislation provides that financial penalties are to apply to those entities that record irregular revenues. The fines, however, may be deducted from future Party Fund disbursements and over a period of up to five years. Various stakeholders agreed that these penalties have no real impact.

To continue strengthening campaign fairness and transparency, the Mission recommends:

- Exploring new mechanisms that favor a more equitable distribution of public financing among political parties.
- Increasing the human, financial, and technological resources assigned to the different levels of the electoral justice system involved in the inspection of party accounts.
- Developing different measures for speeding up the account review process and, consequently, the imposition of penalties by the electoral justice system.
- Strengthening the penalties regime to increase its effectiveness and deterrent effects.

## **Women's political participation**

### Access to candidacies and elected office

Brazilian law states that each party or coalition must register a minimum of 30% and a maximum of 70% of candidates of each gender for proportional representation positions.<sup>99</sup> Failure to comply with these provisions is grounds for the registration application of the political party or coalition to be rejected.<sup>100</sup> While the Mission noted that the parties comply with this legal obligation, the 30% currently functions more as a ceiling than a minimum floor. Similarly, other factors—such as the use of open lists or the

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96 The body charged with crosschecking information, recording irregularities, and leading accountability-based investigations. It comprises the TSE, the Federal Court of Accounts (TCU), the Federal Revenue Service of Brazil (RFB), the Financial Activities Control Board (COAF), the Electoral Prosecutor's Office (MPE), and the Federal Police Department (DPF).

97 In the 2016 local elections, 387,000 indications of irregularities were detected in electoral accounts, amounting to a total of R\$ 1 billion. In the 2018 general elections, there were 32,000 indications, for a total of R\$ 98 million. And, in the most recent election (the 2020 local elections), 641,000 indications were recorded, totaling R\$ 2 billion.

98 The large volume of financial transactions is also accompanied by an increase in the number of irregularities, increasing the cases before the Electoral Tribunal, which is still analyzing the 2014 accounts.

99 Law 9.504 of 1997, Article 10, paragraph II. Proportional representation seats are found in the Chamber of Deputies, the Legislative Chamber of Brasilia, state legislative assemblies, and municipal chambers.

100 TSE Resolution 23.675/2021, Article 1.

greater difficulties faced by women candidates in accessing financial resources for their campaigns—limit the effect that the quotas have on women being effectively elected.

The Mission noted with satisfaction that following this election, women’s representation in the Chamber of Deputies increased over the 2018 results: a total of 91 women deputies were elected, representing 17.7% of the membership.<sup>101</sup> In terms of the percentage of women in parliament, however, Brazil is below the average for the Americas, which stands at 34.4%.<sup>102</sup> At the same time, only four women were elected to the 27 seats in the Senate up for election, and in the 27 gubernatorial elections, only two women were elected as state executives.<sup>103</sup>

The Mission noted that the political financing rules state that 5% of the total Party Fund must be used to create and conduct programs for the promotion and dissemination of women’s political participation.<sup>104</sup> They also instruct parties to allocate a minimum percentage of 30% of both the FEFC and the free advertising time to women’s candidacies.<sup>105</sup> The distribution of funds remains at the discretion of the political parties, which—according to candidates and representatives of the electoral justice system—sometimes use schemes to evade the regulations.

The electoral rules stipulate that parties whose accounts have been rejected for not respecting the provisions governing the distribution and use of resources are subject to penalties including, depending on the case, the loss of the right to receive resources from the Party Fund,<sup>106</sup> the payment of a fine, and the obligation to return irregularly used funds.<sup>107</sup> However, the Mission learned that in 2019, those parties that had failed to comply with the allocation of funds earmarked for women in previous elections were granted an amnesty.<sup>108</sup>

In addition, the Mission highlights the fact that the recently enacted regulations state that in calculating the allocation of the Party Fund and the FEFC among political parties, votes cast for women to the Chamber of Deputies in the elections to be held between 2022 and 2030 are to count as double.<sup>109</sup> This measure seeks to encourage political parties to invest more resources in women’s candidacies.

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101 See: <https://www.camara.leg.br/noticias/911406-bancada-feminina-aumenta-18-e-tem-2-representantes-trans/>.

102 See: Inter Parliamentary Union – IPU Parline: <https://data.ipu.org/women-ranking?month=8&year=2022> and <https://data.ipu.org/women-averages?month=8&year=2022>.

103 Results announced by the TSE:

<https://resultados.tse.jus.br/oficial/app/index.html#/eleicao;e=e544;uf=rn;ufbu=rn/resultados> and <https://resultados.tse.jus.br/oficial/app/index.html#/eleicao;e=e545;uf=pe;ufbu=pe/resultados>.

104 Law 13.877 of 2019, Article 44.

105 Resolution 23.665/2021, Article 1, and Constitutional Amendment 117 of 2022, Article 1.

106 See: <https://www.tse.jus.br/eleicoes/processo-eleitoral-brasileiro/sancoes>.

107 Law 9.096/1995, Article 44, paragraph XI, section 5. See also: <https://temasselecionados.tse.jus.br/temas-selecionados/partido-politico/fundo-partidario/cota/suspensao>.

108 Law 13.831/2019, Article 2, adding Articles 55-A to 55-C to Law 9.096/1995.

109 Constitutional Amendment 111 of 2021, Article 2.

The Mission notes with pleasure the institutionalization of the work of the Gender Policy Management Commission (TSE Women),<sup>110</sup> created in response to a recommendation made by the 2018 OAS/EOM and intended to promote women's participation in politics and within the electoral justice system. It also noted the work coordinating initiatives in projects to broaden the participation of historically marginalized groups carried out by the TSE's Inclusion and Diversity Advisory Office, which was created in February 2022.<sup>111</sup>

In order to continue promoting equitable political participation, the Mission recommends:

- Establishing mechanisms that allow the 30% quota to be a minimum limit for women candidates, rather than a maximum limit, and considering the adoption of a legal framework to move towards political parity.
- Specifically regulating the distribution of public funding for a more equitable distribution among candidates, as well as effectively enforcing penalties for those political organizations that fail to comply with the regulations.

### Political violence against women

The OAS/EOM noted with satisfaction the enactment of legislation to prevent, repress, and combat political violence against women during elections and in their exercise of political rights and public duties.<sup>112</sup> Thus, the Mission highlights that the TSE and the Electoral Attorney General's Office implemented a protocol that allows for joint actions in the investigation and prosecution of the crimes proscribed in law.<sup>113</sup> Due to its recent classification, however, the OAS/EOM noted that no systematized statistics on this type of violence are yet available.

Therefore, the Mission recommends:

- Establishing a systematic register of the complaints filed, and publishing statistics to allow the production of diagnostic studies to prevent and punish this type of violence.
- Strengthening awareness-raising initiatives about legislation related to political violence against women among political parties, women candidates themselves, and those responsible for administering justice.

### **Electoral participation by indigenous and Afro-descendent peoples**

#### Access to candidacies and elected office

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110 Ordinance 791/2019.

111 TSE Resolution 23.683/2022, Article 2.

112 Law 14.192 of 2021.

113 Protocol for joint action in addressing gender-based political violence, July 2022.

People self-identifying as Afro-descendants in Brazil represent 50.7% of the country's inhabitants,<sup>114</sup> while those self-identifying as indigenous represent 0.43% of the total population.<sup>115</sup> The Mission noted that in this election, considering all the positions up for election, candidacies of people of African descent amounted to 50.3% of the total (14,897), thus surpassing those of White people, while those of indigenous people represented 0.64% of the total (186).<sup>116</sup> This indicates an increase over 2018, when their candidacies totaled 3,160 and 133, respectively.

However, various actors and organizations with whom the Mission spoke agreed that those percentages do not translate into seats in the legislative chambers and other posts. The OAS/EOM found that in the 2022 electoral process, seven indigenous candidates and 141 Afro-descendent candidates were elected to federal legislative positions (Chamber of Deputies and Senate):<sup>117</sup> taken together, they will represent 27.4% of the seats up for election. In addition, nine governorships will be held by Afro-descendants and one by an indigenous candidate, representing 37% of the total.<sup>118</sup>

As regards political financing, in 2020 earmarked funds were established within the FEFC for Black candidates, in an amount equal to the proportion they represent in the party lists.<sup>119</sup> However, the regulations do not establish clear and specific criteria for the equitable distribution of resources. Various actors and organizations with whom the Mission met stated that the distribution of these funds concentrates on only a few candidates. The OAS/EOM warned that since this rule was only recently adopted, there are still no specific oversight mechanisms in place to monitor and sanction non-compliance. It noted that there are no rules aimed at guaranteeing public funding for the indigenous candidacies.

The Mission highlights that the recently approved regulations establish that, in calculating the allocation of the Party Fund and the FEFC, the votes cast for Black candidacies to the Chamber of Deputies in the elections to be held between 2022 and 2030 will count double.<sup>120</sup> This measure could encourage political parties to invest greater resources in making those candidacies effectively viable. Nevertheless, several

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114 See: <https://www.ibge.gov.br/estatisticas/sociais/populacao/9662-censo-demografico-2010.html?edicao=10503&t=destaques>.

115 See: <https://indigenas.ibge.gov.br/graficos-e-tabelas-2.html>.

116 See: <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-candidaturas/cor-ra%C3%A7a?session=15870856083483>

117 See: <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-candidaturas/cor-ra%C3%A7a?session=5063740672675> and <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-candidaturas/cor-ra%C3%A7a?session=5063740672675>.

118 Results announced by the TSE: <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-candidaturas/cargo?session=586426226658> and <https://sig.tse.jus.br/ords/dwapr/seai/r/sig-candidaturas/cargo?session=586426226658>.

119 TSE Resolution 23.664/2021, Article 1, amending Article 6 of Resolution 23.605/2019.

120 Constitutional Amendment 111 of 2021, Article 2.

actors and organizations expressed to the Mission their concern about the phenomenon of candidates who incorrectly use self-identification as Afro-descendants only to access the earmarked funds.<sup>121</sup>

The Mission recommends:

- Regulating more specifically the distribution of public funding resources for a more equitable distribution among candidates and establishing earmarked funds for indigenous candidacies.
- Defining more clearly the penalties for those parties that fail to comply with the quota for Afro-Brazilians in the distribution of public funding.

### Electoral registry and promotion of participation

In relation to the electoral registry, the OAS/EOM observed that there are still no official data on the ethnic origin of voters, which would allow the determination of registration and participation rates among indigenous and Afro-descendent communities or the ethnic breakdown of polling station officials and poll monitors. Nevertheless, the Mission highlights the TSE's initiative, in line with recommendations made by the 2020 OAS/EOM, to include in the regulations provisions that add information fields to the electoral registration form, to collect self-identification data indicating color, race, and membership of an indigenous group or quilombola community.<sup>122</sup>

The law also recognizes that it is a fundamental right of indigenous and quilombola people to have their social organization, customs, languages, beliefs, and traditions recognized in the provision of electoral services.<sup>123</sup> Thus, the Mission noted with pleasure the publication of materials in indigenous languages in Mato Grosso,<sup>124</sup> Tocantins,<sup>125</sup> and Minas Gerais.<sup>126</sup>

In view of the above, the Mission recommends:

- Producing materials in indigenous languages, both printed and audiovisual, to promote the vote of indigenous peoples, especially in those communities unable to vote in Portuguese.

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121 See: <https://www.jota.info/eleicoes/o-que-pode-acontecer-com-os-candidatos-que-viraram-negros-nas-eleicoes-2022-26082022> and <https://www.dw.com/pt-br/novas-regras-eleitorais-n%C3%A3o-garantem-diversidade-dizem-cr%C3%ADticos/a-62837213>.

122 TSE Resolution 23.659/2021, Article 42, paragraphs V and VI. Quilombolas are people who live in geographical areas of Brazil associated with *quilombos*, which are geographical areas with Black population settlements.

123 TSE Resolution 23.659/2021, Article 13.

124 <https://www.tre-mt.jus.br/o-tre/catalogo-de-publicacoes>.

125 [https://www.tre-to.jus.br/++theme+justica\\_eleitoral/pdfjs/web/viewer.html?file=https://www.tre-to.jus.br/o-tre/publicacoes/cartilhas-bilingues-2020/cartilha-indigena-xerente/@@download/file/Cartilha%20Indigenas%20Xerente%20-%20Ak%3%AA.pdf](https://www.tre-to.jus.br/++theme+justica_eleitoral/pdfjs/web/viewer.html?file=https://www.tre-to.jus.br/o-tre/publicacoes/cartilhas-bilingues-2020/cartilha-indigena-xerente/@@download/file/Cartilha%20Indigenas%20Xerente%20-%20Ak%3%AA.pdf).

126 Printed material provided by the TSE Inclusion and Diversity Advisory Office.





- Strengthening the electoral bodies' statistical information on the participation of indigenous and Afro-descendent peoples in electoral processes.

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