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# **ELECTORAL JUSTICE SYSTEMS IN THE AMERICAS:**

**A Perspective from OAS  
Electoral Observation  
Missions (2017-2021)**

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**GENERAL SECRETARIAT  
OF THE ORGANIZATION OF  
AMERICAN STATES (OAS)**

**SECRETARIAT  
FOR STRENGTHENING  
DEMOCRACY (SSD)**

**DEPARTMENT OF AND  
ELECTORAL COOPERATION  
OBSERVATION (DECO)**



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## General Secretariat of the Organization of American States

### Luis Almagro

Secretary General

### Néstor Mendez

Assistant Secretary General

### Francisco Guerrero

Secretary for Strengthening Democracy

### Gerardo de Icaza

Director, Department of Electoral Cooperation and Observation

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**Project Manager:** Brenda Santamaria, Chief, Electoral Observation Section, DECO

**Prepared by:** Georgina de la Fuente, Yerutí Méndez, and Clarissa Correa Neto Ribeiro

**Support in the review of the document:** Belén Ribulotta, Melene Glynn, and Marty Huenneke

**Design:** Gastón Cleiman

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# Introduction

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Electoral justice is a cornerstone of democracy. On the one hand, it promotes political stability by providing an institutional mechanism for resolving electoral disputes. On the other, it ensures a uniform legal framework with which all electoral actors must comply. Thus, a strong electoral justice system not only protects citizens' political rights but also reinforces democratic governance.<sup>1</sup>

As in any other area concerning the fulfillment and guarantee of rights, electoral justice must include a system for filling and resolving claims whenever it is deemed that citizens' political rights have been violated. Therefore, electoral justice is defined as the body of protective means and mechanisms designed to uphold the principles of free, fair, and legitimate elections as well as to safeguard the political-electoral rights of all people.<sup>2</sup>

Although the electoral justice systems of the countries in this study differ, they share a common goal: to ensure certainty and legitimacy in electoral processes. In this context, the findings and recommendations issued by Electoral Observation Missions (EOMs) on electoral justice systems concentrate on the fundamental principles of electoral law and organic and procedural guarantees.

Recommendations are guided by key attributes, such as impartiality and independence, access to justice, fair and effective processes, and the administration and transparency of electoral processes. These recommendations are based on various provisions of the American Convention on Human Rights. For example, Article 8 establishes the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or court previously established by law. Likewise, Article 25 recognizes the right of every person to an effective remedy before competent judges or courts, which protects them against acts that violate their fundamental rights recognized by the Constitution, the law, or the aforementioned Convention.

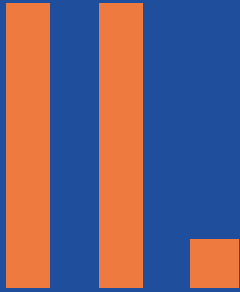
EOM recommendations also incorporate precepts from other conventional instruments, such as the Universal Declaration of Human Rights, the American Declara-

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1 Lara Otaola, M., Lima Castañeda, F. and Zinser Almanza, M. (2019). *Acceso a la justicia electoral en perspectiva comparada: Garantizando la defensa y protección de los derechos electorales de grupos subrepresentados en México* [Access to electoral justice in a comparative perspective: ensuring the defense and protection of the electoral rights of underrepresented groups in Mexico]. International Institute for Democracy and Electoral Assistance. Stockholm, Sweden. p. 10.

2 Organization of American States. (2019). *Observing Electoral Justice Systems: A Manual for OAS Electoral Observation Missions*. Organization of American States. Washington, DC, p. 14.

tion of the Rights and Duties of Man, and the International Covenant on Civil and Political Rights, which also provide guarantees of access to justice for the effective protection of political rights.



# Electoral Justice Systems from the Perspective of OAS Electoral Observation Missions

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Since 1962, the Organization of American States (OAS) has deployed more than 320 EOMs in 28 countries in the Hemisphere.<sup>3</sup> These have served as an instrument of democratic consolidation to support the holding of periodic, free, and fair elections based on universal and secret suffrage as an expression of the sovereignty of the people. Consequently, EOMs have offered valuable insights into each country's progress in consolidating democracy and have pinpointed areas that still require improvement.<sup>4</sup> EOM findings and recommendations have particularly helped the Department of Electoral Cooperation and Observation (DECO) develop projects that support the modernization of services offered by electoral bodies, while helping member states to gradually improve their electoral processes in a wide range of relevant areas, with a view to perfecting their democratic systems.

Since 2017, the final reports of OAS/EOMs have included thematic annexes that elaborate on and deepen the findings and recommendations issued for each electoral process. In this study, the thematic annexes range from 2017 to 2021. This study offers a detailed assessment of 47 EOMs deployed for the observation of 36 electoral processes in 20 countries in the region, as indicated below (see **Table 1**).

**TABLE 1. Electoral processes analyzed in this study**

NUMBER	COUNTRY	ELECTION/S	YEAR
1	The Bahamas	General	2017
2	Bolivia*	Judicial Branch	2017
3	Ecuador*	General, referendum, and second round of presidential election	2017
4	Haiti*	General	2017
5	Honduras*	General	2017

**3** Argentina, Barbados, Canada, Chile, Uruguay and Trinidad and Tobago are member states where no EOMs have been deployed.

**4** Organization of American States. (2018). OAS Electoral Observation Missions: Recommendations and Reforms. Organization of American States, Washington, DC.

NUMBER	COUNTRY	ELECTION/S	YEAR
6	Nicaragua*	Municipal	2017
7	Brazil*	General, first and second rounds	2018
8	Colombia*	Presidential, first and second rounds	2018
9	Costa Rica*	General, first and second rounds	2018
10	Ecuador*	Popular consultation and referendum	2018
11	El Salvador*	Legislative and municipal	2018
12	Mexico*	Federal and local	2018
13	Paraguay*	General	2018
14	Peru*	Referendum	2018
15	Bolivia*	General	2019
16	Colombia*	Local authorities	2019
17	Dominica*	General	2019
18	Ecuador*	Local, and Citizen Participation and Social Oversight Council	2019
19	El Salvador*	Presidential	2019
20	Guatemala*	General and presidential election (second round)	2019
21	Panama*	General	2019
22	Bolivia*	General	2020
23	Brazil*	Municipal	2020
24	Costa Rica*	Municipal	2020
25	United States of America	General	2020

NUMBER	COUNTRY	ELECTION/S	YEAR
26	Guyana*	General	2020
27	Peru*	Extraordinary Congressional election	2020
28	Dominican Republic*	Municipal; Elections for president, senators, and deputies	2020
29	Suriname*	General	2020
30	Ecuador*	General	2021
31	El Salvador*	Legislative and Municipal	2021
32	Honduras*	General	2021
33	Mexico*	Federal and local	2021
34	Paraguay*	Municipal	2021
35	Peru*	General and presidential election (second round)	2021
36	The Bahamas*	General	2021

\*EOM with at least one specialist in electoral justice.

From 2017 to 2021, EOMs issued over 1,900 recommendations across eight categories:

- Organization
- Justice
- Technology
- Financing
- Women's political participation
- Political participation of Indigenous peoples and Afro-descendants
- Campaigns and freedom of expression
- Electoral violence

In the specific case of electoral justice, 94% of the electoral processes observed by the OAS (see **Table 1**) have included specialists in the field, who have brought their expertise to bear in the issuance of over 230 recommendations. See **Table 2** for the number of recommendations on electoral justice by country.

**TABLE 2. Distribution of EOM recommendations on electoral justice by country**

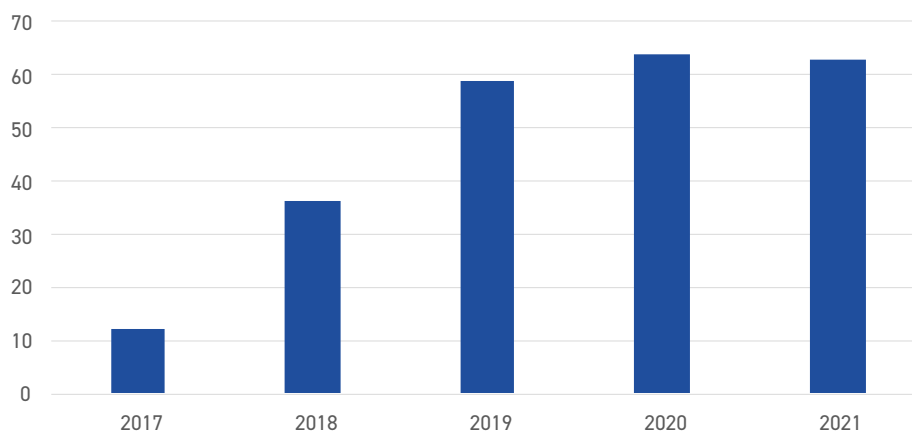
COUNTRY	NUMBER OF RECOMMENDATIONS ISSUED
Bolivia	19
Brazil	5
Colombia	15
Costa Rica	6
Dominica	4
Dominican Republic	21
Ecuador	23
El Salvador	27
Guatemala	10
Guyana	3
Haiti	1
Honduras	14
Mexico	7
Nicaragua	6
Panama	12
Paraguay	17
Peru	30

COUNTRY	NUMBER OF RECOMMENDATIONS ISSUED
Suriname	6
The Bahamas	3
United States of America	5
<b>TOTAL</b>	<b>234</b>

Although OAS/EOMs began observing electoral justice systems specifically in 2014 based on general guidelines, a significant milestone was the publication of *Observing Electoral Justice Systems: A Manual for OAS Electoral Observation Missions*, in 2019. This document defines electoral justice, specifies the applicable Inter-American standards, and demonstrates how the functioning of electoral justice systems affects the quality of elections. Additionally, it outlines the various attributes and indicators that specialists must consider in their analysis, as well as their responsibilities as OAS/EOM members.

The impact of publishing this specific methodology to observe electoral justice is evident in the increased number of EOM recommendations in this area. In 2017, the OAS issued only 12 recommendations concerning electoral justice systems. However, this number increased significantly to 59 in 2019 and remained at similar levels during 2020 and 2021 (see **Figure 1**).

**FIGURE 1. Number of recommendations on electoral justice systems by year**



It is important to note that this study does not cover all OAS member states, as it only focuses on electoral cycles observed by the Organization from 2017 to 2021. Moreover, the number of observations for each country is not a reflection on the quality of the electoral system itself or the adequacy of the electoral justice system. These recommendations, primarily suggestions for specific improvements,<sup>5</sup> were issued based on direct electoral observations and the analysis of justice in specific electoral processes. This is based on current legislation and information gathered from each country's various institutional, political, and social actors.

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<sup>5</sup> Organization of American States. *op. cit.* p. 6.



# Analysis of EOM Recommendations (2017 to 2021)

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Between 2017 and 2021, EOMs issued 234 recommendations on electoral justice, organized into six categories as follows (see Table 3).<sup>6</sup>

**TABLE 3. Categories of EOM recommendations on electoral justice (2017-2021)**

CATEGORY	DESCRIPTION
<b>Independent and impartial courts</b>	Recommendations on selection and appointment procedures, autonomy, and responsibility of the electoral authority, including guarantees for the exercise of jurisdiction, the nature of the Court's decisions, and the control of conventionality and constitutionality.
<b>Laws and regulations</b>	Regarding regulatory changes, inclusions, clarity, and the regulation of potential procedures during the electoral cycle.
<b>Access to justice</b>	Measures addressing the formal and economic requirements for access to justice and judicial protection for individuals claiming a violation of their political rights.
<b>Administration and transparency of electoral justice</b>	Regarding the dissemination of information and communication on electoral justice, focusing on publicity, accountability, professionalization, and capacity building.
<b>Process and legal remedies</b>	Regarding recommendations on the fairness and effectiveness of procedures and challenges related to timelines, preclusion, evidence submission, the right to defense and participation, notification, substantiation, and appeals.
<b>Electoral crimes and offenses</b>	Regarding electoral crimes and offenses, their classification, applicable laws, and penalties.
<b>Institutional design</b>	Establishment of a specialized body or the division of functions to ensure distinct roles, such as separating administrative matters from jurisdictional responsibilities.

<sup>6</sup> Recommendations can be found in their corresponding reports, available at: <https://www.oas.org/eomdatabase/default.aspx?lang=es>



See **Table 4** for the distribution of EOM recommendations on electoral justice by category (2017-2021).

**TABLE 4. Distribution of EOM recommendations on electoral justice by category (2017-2021)**

CATEGORY	NUMBER	PERCENTAGE
Independent and impartial courts	26	11
Laws and regulations	52	22
Access to justice	18	8
Administration and transparency of electoral justice	41	18
Process and legal remedies	52	22
Electoral crimes and offenses	22	9
Institutional design	9	4
Others	14	6
<b>TOTAL</b>	<b>234</b>	<b>100</b>

The combined categories of “**Laws and regulations**” and “**Process and legal remedies**” account for 44% of the total recommendations issued by EOMs on electoral justice. This suggests that EOMs view the clarity of regulations and the effectiveness of processes and legal remedies as essential for the proper functioning of electoral systems. The high percentage of recommendations in these categories reflects the significant concern of EOMs for establishing and maintaining clear rules and effective mechanisms for resolving electoral disputes.

Another significant fact is that recommendations were made to improve laws or regulations related to electoral justice in 17 of the 20 countries that hosted a Mission between 2017 and 2021. These recommendations refer to:

- Legal remedies, timelines, competent authorities, nullities, and effects of the resolutions.
- Criteria for interpreting matters related to the right to participation.
- Powers of the various authorities participating in the electoral process.
- Determination of the various stages of the election and finality of resolutions.
- Determination of maximum timelines to modify election rules.
- Guarantees of irremovability and a system of responsibilities.
- Norms to guide the principle of government neutrality.
- Registration and de-registration rules for political parties.
- Consolidation of rules into a single body of laws to provide clarity and coherence within the electoral legal system.

With respect to **process and legal remedies** there was a significant increase in the number of recommendations after 2017, when only three recommendations were recorded, up to five in 2018. From 2019 onwards, the number of recommendations rose significantly, remaining between 13 and 16 until 2021. Prior to 2019, recommendations primarily addressed general aspects of the stages of the electoral process, including timelines, formalities, and remedies for addressing potential breaches of political-electoral rights.

While recommendations have continued to address these broad aspects, in recent years, they have increasingly focused on more specific matters to enhance legal remedies. These specific matters include:

- Creating electoral calendars with clearly defined timelines.
- Establishing the principle that procedural stages cannot be reopened once a definitive decision has been issued (preclusion).
- Establishing timelines for:
  - o Resolving electoral matters, imposing penalties, and contesting candidacies.
  - o Announcing results.
  - o Filing actions of unconstitutionality in electoral matters.
  - o Serving notifications and admitting disputes, among others.

Moreover, EOMs have recognized the need to enhance the clarity and effectiveness of existing provisions regarding legal remedies. In other words, it is not enough to consider the general rules regarding legal remedies available to all actors; there is a need for greater clarity, particularly in the following areas:

- Clarifying the competencies of the different jurisdictional bodies reviewing complaints.
- Listing admissible evidence and its evaluation criteria.
- Establishing rules for processing records.
- Specifying the reasons for the inadmissibility of each challenge.

Finally, this category also encompasses recommendations for allocating financial and/or human resources to ensure the effective functioning of the electoral justice system. These recommendations were addressed to five of the countries covered by this study.

Eighteen percent of the recommendations issued (41 recommendations) correspond to **administration and transparency of electoral justice**. Of these, 17 recommendations focus on enhancing disclosure and accountability mechanisms. They aim to facilitate access to information through website publications, the implementation of search engines, and the preparation and publication of reports and statistics on the various legal remedies. Another ten recommend the appropriate allocation of financial and human resources to ensure the proper functioning of jurisdictional bodies or units, and the strengthening of their staff capabilities. It was particularly recommended that financial resources be guaranteed to address contentious elements that might arise during campaigns.

Other recommendations under this category focused on developing manuals with information on institutions and procedural rules to facilitate access to justice. It is also suggested that inter-institutional communication channels be established for effective information exchange; that court decisions be made available in writing, with supporting justifications; and that updated websites be developed and maintained to publish the status of ongoing and resolved disputes, closed cases, rulings, and statistics, among other relevant information.

Eleven percent of the recommendations are included under the category **independent and impartial** courts. Within this category, of particular note are recommendations regarding the mechanisms for appointing judges, as well as the need to establish specialization and merit as requirements for occupying positions in the electoral system. Member states have also been urged to address matters related to the duration of tenure and the staggered renewal of appointments, grounds for

removal, the implementation of a specialized judicial career, and measures to ensure the budgetary autonomy of jurisdictional authorities. Other less frequent but highly relevant recommendations focus on preventing interference from other authorities in resolving electoral matters; reviewing the rules that allow judges to excuse themselves from hearing and resolving certain matters, and on the regulatory structure of the jurisdictional authority; as well as on the need to ensure the stability necessary to guarantee the independence of the body.

About 10% of the recommendations fell under the category **electoral crimes and offenses**. Nearly half of them focus on the institutional sphere. Of these, nearly a quarter propose creating specialized bodies to prosecute, investigate, and prevent election crimes that may affect the fairness or proper development of the electoral process. As recommended by EOMs, these bodies must have the necessary financial, technical, and operational resources to fulfill their mandate. The remaining four recommendations about institutionality focus on analyzing and reconsidering the distribution of competencies among authorities in law, where they already exist. It is thus intended that the adjudication of electoral offenses fall under a specific authority, separate from other jurisdictional and administrative authorities.

Of the remaining recommendations under this category, two suggest the elaboration of a single law or specific regulation outlining the penalties for electoral offenses. Five other recommendations advocate for defining and implementing a strict and gradual list of grounds and penalties, so that judicial authorities formulate proportional and reasonable resolutions, taking into account the type of conduct, its seriousness, and its effects.

Some additional recommendations seek to adjust existing systems, such as identifying higher-incidence behaviors to ensure their classification is appropriate for prosecution; expanding the list of sanctionable subjects and providing specifications on the offenses that may be incurred by public servants. Also suggested are dissemination campaigns aimed at citizens on electoral crimes and offenses to promote reporting channels as well as offenses related to specific aspects of the electoral process, such as candidate registrations, among others.

Regarding **access to justice**, which encompasses less than 10% of the recommendations, of note are those that advocate for expanding legal standing so that any citizen can file claims, thereby ensuring access for all individuals to the mechanisms for defending their political-electoral rights. Also noteworthy are the recommendations to alleviate the burdens associated with the filing of claims. Three recommendations were identified in this regard: one addressing the submission of unnecessary information and two concerning costs. Other recommendations propose reforming the procedures for reviewing decisions made by the jurisdictional body and considering the possibility of annulling elections in extreme cases.

In electoral justice systems that are still in the consolidation stage, recommendations have been made to define all jurisdictional remedies, the parties that may file them and the timelines for filing and resolution. It is also recommended that all activities and resolutions of the electoral process be subject to oversight through challenges, among other measures.

Lastly, the recommendations on **institutional design** represent the smallest proportion, indicating that while significant progress is being made in the region, there are still opportunities to enhance electoral systems by incorporating specialized institutions to protect citizens' political-electoral rights. In this regard, in cases where a single institution performs administrative and jurisdictional functions, EOMs have recommended their separation to prevent a single entity from organizing and judging proceedings. In addition, it has been suggested that jurisdictional bodies' competencies in resolving electoral disputes be clearly defined in order to transform them into specialized authorities with timelines and terms that respond to the unique nature of electoral matters.

# IV.

Electoral  
Justice:  
A Regional  
Perspective

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EOM reports between 2017 and 2021 allow for a regional assessment of the evolution and trends in electoral justice based on the experiences of these 20 countries. The purpose is to identify the trends in each of the elements influencing the advancement of electoral justice, highlighting good practices and related recommendations from the OAS and the various elements that may shape the consolidation of robust electoral justice systems in the future. Although not exhaustive, each section includes examples of different countries' experiences to facilitate better understanding.

## 1. Independent and impartial courts

One of the fundamental guarantees for jurisdictional activity is the independence of the electoral dispute resolution bodies (EDRB), ensuring they remain free from any form of subordination to other powers. As a good practice, EOMs recommend that the Constitution provide for this independence and recognize the operative, administrative, and financial autonomy<sup>7</sup> of the jurisdictional bodies. Similarly, every electoral justice system must strive to provide certainty and legitimacy to electoral processes. This is achievable as long as there is a perception that they function effectively, demonstrating independence and impartiality to promote justice, transparency, accessibility, inclusivity, and equality. Otherwise, the system's credibility risks being compromised, leading voters to question their participation in the electoral process or even reject election results.<sup>8</sup>

It is essential that the individuals who comprise the jurisdictional body act with absolute independence, impartiality, and professionalism. To ensure this, EOMs recommend implementing selection and appointment procedures based on suitability and professionalism criteria, establishing regulations that ensure stability in the position, clearly defining the impediments and grounds for excusal and recusal, and formulating rules that clearly define which positions are incompatible with the judicial function.<sup>9</sup>

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<sup>7</sup> Organization of American States. *op. cit.* p. 16.

<sup>8</sup> International Institute for Democracy and Electoral Assistance. (2011). *Electoral Justice: The International IDEA Handbook*. International Institute for Democracy and Electoral Assistance. Stockholm, Sweden. pp. 5-6.

<sup>9</sup> *Idem*.

Similarly, EOMs have considered it crucial to ensure the stability of judges to prevent discretion in their appointment and removal from office.

Among the 20 countries covered by this study, 19 have established legal provisions for appointing members to the electoral jurisdictional bodies and defining their terms of office. These provisions are crucial for ensuring the autonomy of these bodies (see **Table 5**).

**TABLE 5. Countries with legal mechanisms to appoint members to jurisdictional bodies for solving electoral matters and their terms of office.**

Bolivia	Honduras
Brazil	Mexico
Colombia	Nicaragua
Costa Rica	Panama
Dominica	Paraguay
Dominican Republic	Peru
Ecuador	Suriname
El Salvador	The Bahamas
Guatemala	United States of America
Guyana	

Similarly, EOMs have emphasized that the staggered renewals and appointments for periods extending beyond the terms of office of the Executive and Legislative branches help ensure that the selection of regular members remains uninfluenced by the political-electoral environment. This practice is observed in Costa Rica, Ecuador, Mexico, Panama, and Peru. Additionally, in Ecuador and Mexico, legislation establishes gender parity in the selection and renewal of members of jurisdictional bodies.

On the other hand, a key aspect of institutional stability is clarity in the grounds and methods for removing their members. Various models exist in this regard. For in-



stance, in countries such as The Bahamas, Dominica, and Guyana, judges can only be removed for justified reasons, such as the inability to perform their functions, which must be determined by an independent and impartial court. In contrast, Suriname’s model allows the President to suspend a judge if any of the grounds for removal established in the Constitution is met, such as mental disability, bankruptcy, misconduct or immorality, among others. In Paraguay, members of the Supreme Electoral Court (TSJE for its acronym in Spanish) can only be removed through the grounds and impeachment procedure established in the Constitution.

Another fundamental guarantee for exercising the jurisdictional function of the courts is administrative and financial autonomy. In this regard, it is essential that jurisdictional bodies have the necessary resources to perform their functions independently. Notably, EOM reports on electoral processes in various countries have emphasized the importance of ensuring that electoral bodies receive sufficient funds in a timely manner for the proper execution of the different stages of the electoral process, as well as for the professionalization of their staff. EOMs have also identified good practices where legislation ensures the allocation of resources without the intervention of other powers. See **Table 6** for some examples.

**TABLE 6. Examples of legal mechanisms to ensure the financial autonomy of jurisdictional bodies**

COUNTRY	LEGAL MECHANISM
<b>Costa Rica</b>	Each year, the Supreme Electoral Tribunal (TSE for its acronym in Spanish) formulates its budget proposal which is incorporated into the ordinary bill that the President of the Republic submits to the Legislative Assembly for approval. Article 177 of the Constitution stipulates that the expenditure budgeted by the TSE to ensure the effectiveness of suffrage cannot be contested.
<b>Guatemala</b>	Article 122 of the Electoral and Political Parties Law (LEPP for its acronym in Spanish) establishes that the Supreme Electoral Tribunal (TSE) is allocated no less than 0.5% of the State’s General Budget of Ordinary Revenue to cover its operational and electoral expenses. This ensures they can perform their functions independently, free from political decisions or financial pressures.  The regulations also provide that if allocated funds are insufficient, they can be increased as needed to meet the inherent needs of electoral processes or consultative procedures.

## 2.

### Laws and regulations

The effectiveness of an electoral justice system is strengthened when regulations are accessible to both the actors involved and the citizenry in general. Monitoring the evolution and changes in the phenomena and dynamics of electoral processes allows for the creation of new regulations or the reform of existing ones to address emerging challenges. EOMs have noted that these regulations are often found in different legal instruments and that, given their highly technical nature, this dispersion can make it difficult for citizens, political parties, and candidates to fully understand their rights and obligations in electoral matters.

In this regard, in countries like Brazil, Colombia, Costa Rica, Paraguay, and Peru, it has been recommended that reforms be considered to unify the applicable regulations for each electoral process, thereby providing clarity and certainty to the actors involved. It is worth noting that efforts to systematize and unify electoral rules contained in various legal frameworks have already been observed in some countries, such as Brazil and Peru. Furthermore, EOMs have stated that it is ideal that the rules be approved well before the electoral process so that all actors can know them. See **Table 7** for some examples of legal provisions that establish timelines for the approval of electoral reforms.

**TABLE 7.** Examples of legal provisions establishing timelines for the approval of electoral reforms

COUNTRY	LEGAL PROVISION
Brazil	Laws governing the electoral process must be published at least one year before election day. Likewise, the resolutions issued by the Superior Electoral Court (TSE for its acronym in Portuguese) must be published before March of the election year.
Ecuador	The Democracy Code prohibits reforming electoral laws that are set to take effect in the year preceding the elections they are meant to regulate.

<b>Mexico</b>	The Political Constitution of the United Mexican States stipulates that federal and local electoral laws must be enacted and published at least 90 days before the beginning of the electoral process in which they will be applied. No fundamental legal modifications can be made during the electoral process.
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Similarly, due to the specific characteristics of electoral matters, ordinary procedural rules are often inadequate to deal with electoral processes. The need for timely resolutions and the requirement to conclude each stage definitively (preclusion), among other factors, make it essential to have specific regulations on electoral matters since the schedules and timelines of the ordinary justice system do not align with the dynamics of the elections.

### 3. Access to justice

The mechanisms outlined in the electoral procedural regulations should be accessible in terms of time, distance, and cost, allowing for a prompt resolution of the underlying conflict without unjustified procedural requirements or obstacles.<sup>10</sup> Ideally, in an electoral process, all actions and resolutions of the electoral authorities should be subject to review by electoral courts to ensure they adhere to the principles of utmost transparency, impartiality, celerity, and timeliness. In this regard, each member state has different methods for accessing jurisdictional bodies and specific reasons for challenging decisions.

Another key aspect of access to justice is ensuring that anyone interested in the electoral process can seek electoral justice through available legal remedies. Various EOMs have observed that certain means are not available to citizens but only to political parties and candidates, even though citizens are an integral part of the electoral process. See **Table 8** for examples of different legal standing rules and the countries in which they have been identified.

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<sup>10</sup> *Idem.*

**TABLE 8. Examples of legal standing rules**

MODEL	IMPLEMENTED IN
<b>Challenges may be filed only by political actors, whether they are political parties and/or candidates</b>	Nicaragua*, Paraguay, and Peru
<b>Challenges may be filed by political actors, whether political parties and/or candidates, and by any citizen, depending on the act complained about</b>	Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guyana, Mexico, Panama, The Bahamas, and United States of America

\* Citizens are entitled to challenge the composition of the electoral roll.

Also, in certain countries, filing an appeal still requires payment of a fee or hiring legal representation. Consequently, EOMs have highlighted the importance of making these procedures free to ensure access to justice.

Additionally, judicial remedies must be effective; this means they must be capable of achieving the result for which they were conceived. For judicial protection mechanisms to be truly effective, the body to which they are submitted must issue a reasoned conclusion, decide on the merits of the case, and offer an appropriate remedy in case of damages.<sup>11</sup> Article 25.1 of the American Convention on Human Rights, for example, establishes the principle that every person has the right to an effective remedy, which in a simple and prompt manner, protects him or her against actions that violate their fundamental rights. This implies, among other issues, that the procedure for resolving electoral disputes must be adequate to deal with the case in a timely manner and offer an effective remedy for the right that has been violated.<sup>12</sup>

In electoral matters, it is essential to balance the organization of election day activities with the timelines for challenging and resolving the actions of the electoral authority. As a general principle, judicial proceedings must reach a quick resolution. This aspect is especially relevant in electoral matters, where the principle of preclusion should govern. In this way, a matter should be resolved before the corresponding stage is concluded. However, in the region, EOMs have observed cases where specific regulatory or operational characteristics prevent a timely resolution. For example, some of

<sup>11</sup> Organization of American States, *op.cit.*, p. 19.

<sup>12</sup> Organization of American States, *op.cit.*, p. 25.

the resolution deadlines established in the regulations do not align with the timing of the electoral process. Accordingly, EOMs have issued various recommendations. See **Table 9** for examples.

**TABLE 9. Examples of recommendations regarding timelines for resolving issues to ensure the effectiveness of challenges**

Establish fixed and short timelines for challenging candidate registration.
Set timelines for the exhaustion of claims and appeals arising before campaigns start and promote a plural discussion to provide greater legal certainty to the candidate selection system.
Conduct a thorough review of the legal remedies that promote swift and efficient timelines and enable the timely review of decisions made by lower courts.
Establish a maximum resolution time of six months for electoral petitions, with an additional three months for appeals.
Consider the maximum legal timelines for resolving challenges in the electoral calendar.
Ensure that the provisions governing ballot counting and audits allow for their timely conclusion.
Establish the judicial and regulatory mechanisms to ensure that all actions taken at the various stages of the election are promptly and finally resolved.

In general, EOMs have identified some good practices that improve conditions for access to justice despite the existing legal gaps. See **Table 10** for examples.

**TABLE 10. Examples of good practices in access to justice**

COUNTRY	GOOD PRACTICE
<b>Colombia</b>	Faced with regulatory gaps in the rules governing notification of election actions, which do not guarantee that affected individuals are informed, the National Electoral Council (CNE for its acronym in Spanish) has established mechanisms to promote awareness through its resolutions. These measures facilitate access to the right to an adequate defense.
<b>Guatemala</b>	For the 2019 elections, the Supreme Electoral Tribunal (TSE) developed “Elecciones Visibles”, a web application through which interested people could report irregularities during the campaign and on election day. Tools like this are considered to facilitate citizens’ access to electoral justice.
<b>Honduras</b>	The Rules of Procedure for Appeals in Electoral Matters (REPRAME for its acronym in Spanish) contemplate the possibility of correcting deficiencies in the requirements for filing an appeal within 48 hours.
<b>Mexico</b>	Within their competencies, both administrative and jurisdictional authorities develop tools and campaigns to communicate how to file the appeals, legal actions and complaints contemplated in the regulations in force.
<b>Paraguay</b>	<p>The law establishes that, when forms or requirements are set for procedural acts without stating that their omission or disregard renders the act null and void, the judge or court shall recognize their value or effectiveness as long as the adopted form achieves the intended purpose.</p> <p>Similarly, any error or defect in identifying or qualifying the action, claim, incident, act, or remedy in question does not impede accessing what is requested according to the facts invoked, and the evidence provided, if the parties’ intention is clear. In such cases, if the procedure indicated by the parties is incorrect, judges and courts must follow the legally appropriate procedure for the request, challenge, claim, or incident.</p>

## 4.

# Administration and transparency of electoral justice

Electoral justice, as a public service, must be subject to an accountability regime that enhances the credibility of the jurisdictional authority and its resolutions. Transparency in the actions of electoral authorities is a crucial component for ensuring accountability to citizens. It would also be desirable to have statistics documenting the institution's historical memory, thus making it possible to analyze the number of disputes filed with the electoral authority and their corresponding rulings. See Table 11 for some good practices in this area identified by the EOMs in this study.

**TABLE 11. Examples of good practices in transparency of electoral justice**

COUNTRY	GOOD PRACTICE
<b>Brazil</b>	<p>Court deliberations are public, and all decisions and summaries are published promptly on its website, providing accessibility and transparency to the electoral process.</p> <p>Additionally, a public consultation tool for judicial proceedings has been made available to citizens, allowing them to access basic information about the proceedings pending in the Electoral Court.</p>
<b>Costa Rica</b>	<p>The TSE has established a platform for consulting rulings classified in a simple and agile thematic system, as well as the rulings of the Constitutional Chamber on electoral matters. Similarly, the TSE's website allows access to the statistics of rulings issued each year through its annual reports.</p>
<b>Ecuador</b>	<p>The institutional portal of the Election Disputes Tribunal (TCE for its acronym in Spanish) allows access to all rulings and other decisions issued in different cases. The information is organized by year and by case, separating rulings (decisions on the merits) from notifications (decisions on formalities). Thus, citizens can access all decisions, and the principal facts of each, online.</p>

COUNTRY	GOOD PRACTICE
<b>Honduras</b>	In the 2021 elections, special ballot counting was monitored by national and international observers and through the official YouTube channels of the National Electoral Council (CNE) and the National Television of Honduras (TNH for its acronym in Spanish) channel. Similarly, political actors could monitor and print the tally sheets that were of interest to them at a predetermined location.
<b>Mexico</b>	The Electoral Tribunal of the Federal Judiciary (TEPJF for its acronym in Spanish) maintains statistics on the cases filed and resolved and further breaks down the information by year, type of claim or legal remedy, chamber or body, etc.
<b>Peru</b>	<p>The National Electoral Board (JNE for its acronym in Spanish) operates the Central Electoral Operations Center (COPE for its acronym in Spanish), which monitors and coordinates electoral processes. The COPE also centralizes the information produced by the Special Electoral Juries (JEE for its acronym in Spanish) during the performance of their administrative, supervisory and jurisdictional functions. Through the information processed by the COPE, citizens can access real-time statistical data regarding the number of registered candidates by gender, the number of excluded candidates, the reasons for exclusions, the types and number of incidents in the process, electoral conflicts, and electoral risks by area, among others.</p> <p>Additionally, during the 2021 general elections, the hearings in which the JEE and the JNE resolved the challenges filed after the second round were broadcast on a virtual platform to enable citizens to follow up vote counting. This way, it was possible to follow sessions in real time and learn the positions of nullity petitions or defenses adopted by petitioners and the arguments by members of the Plenary.</p>

EOMs have also identified opportunities for improvement in the administration and transparency of electoral justice. Frequent recommendations suggest implementing information systems that are accessible to citizens. See **Table 12** for examples.



**TABLE 12. Examples of recommendations on transparency of electoral justice**

Publish all resolutions of jurisdictional bodies in a systematic and easily accessible manner through search engines on the website of the electoral authority.
Establish dossier control systems for the control of files and information on the legal remedies that allow for the generation of reports and statistics.
Design repositories and search engines to facilitate consultation on specific cases.
Publish resolutions in open data format.
Include a website module that allows users to observe the number of disputes filed, their proceedings and the time in which they are resolved.
Have a mechanism to allow full access to all files without differentiating the types of resolutions.
Disseminate the resolutions issued by the jurisdictional authority through its official website and organize them by topic to facilitate searches.
Maintain an updated database on the cases received, their status, as well as the publication of relevant statistics.
Strengthen publicity through the public presentation of written opinions on electoral legal remedies.
Generate reports and statistics on legal remedies, jurisprudence, and electoral justice resolutions.

The electoral justice system is a sphere requiring a high degree of specialization; therefore, institutions must rely on professional staff. The dynamics of electoral processes require different rules and proceedings from those applied in the ordinary justice, considering the need to conclude each stage of the process within definitive timelines and the need for jurisdictional bodies to resolve contentious issues promptly. Therefore, electoral jurisdictional activity requires professional staff with a high degree of specialization, with the necessary expertise and experience to act promptly and provide certainty to the electoral process. Furthermore, staff career development should be conducted according to a duly regulated career system. In some countries like Mexico, EOMs have identified the existence of rules and procedures that regulate the career service, and a promotion regime, within the electoral jurisdictional bodies.

## 5.

### Process and legal remedies

Certainty in the electoral process requires that there be clarity about the available means for challenging electoral actions and resolutions as well as the moment in the process when they can be contested. The electoral legal remedies available to citizens, political parties, candidates, and other actors are often closely linked to the democratic experience in each member state.

For instance, EOMs deployed in Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, and Peru have observed—in their reports—the various legal remedies provided in each country’s legislation. In some cases, EOMs have noted the relevance of analyzing the expansion of legal remedies to cover all issues that may affect the various stages of the electoral process. See **Table 13** for some examples.

**TABLE 13. Examples of recommendations to expand legal remedies**

Incorporate legal grounds for the annulment of an election.
Incorporate claims to challenge decisions violating political-electoral rights.
Regulate disputes and claims applicable to the electoral process in order to cover the main issues affecting the validity of the vote and possible effects on the right to political participation.
Expand the range of competencies to include, among others, the ability to hear cases regarding lawsuits filed against mergers, alliances, or coalitions agreed upon by political parties; lawsuits for annulment of resolutions issued by the administrative authority in connection with the organization and administration of the electoral process, which constitute electoral actions; lawsuits for annulment of precautionary measures or administrative penalties; complaints filed by candidates or political organizations concerning the use of media during the electoral campaign; conflicts arising from vacancies in elective office.

However, in some member states, specialized procedural rules for electoral matters have not been approved, and instead, the ordinary rules of the national judicial system are used. Given the specialization of electoral matters, various EOMs have recommended studying the feasibility of establishing specific rules for resolving electoral

challenges. These should include a list of evidence and evaluation rules, ruling procedures for pending cases, grounds for inadmissibility of the legal remedies, nullities, parties' rights, timelines, etc. Additionally, it is essential that authority over the legal remedies be vested in a specific authority to avoid duplicated procedures and contradictory decisions.

Regarding the finality of the decisions taken by the bodies, there are essentially two models in the region, as can be seen in the table below (see **Table 14**).

**TABLE 14. Existing models of authorities that can hear electoral matters**

MODEL	IDENTIFIED IN
<p><b>The decisions adopted by the body administering electoral justice are final and unquestionable; that is, these bodies are the last and highest authority in the matter, except for constitutional complaints</b></p>	<p>Brazil, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay</p>
<p><b>Another jurisdictional body can review the decisions of the body responsible for administering electoral justice</b></p>	<p>Bolivia, Costa Rica, Dominican Republic, El Salvador, Honduras and The Bahamas</p>

## 6. Electoral crimes and offenses

The offenses committed by actors during an electoral process must be effectively punished to ensure fairness in the electoral competition. However, it is essential to balance promptness in resolving these offenses and judicial guarantees for accused individuals.

**Table 15** lists the countries where EOMs have identified penalties for electoral crimes and offenses.

**TABLE 15. Countries whose laws include penalties for electoral crimes and offenses**

Bolivia
Colombia
Costa Rica
Dominican Republic
Ecuador
El Salvador
Guatemala
Honduras
Mexico
Nicaragua
Panama
Paraguay
Peru

A central aspect of guaranteeing the viability of electoral processes is the State's ability to prosecute and punish offenders. These offenses are criminalized in some countries, leading to two models as shown below (see **Table 16**).

**TABLE 16.** Existing models for the investigation, prevention and prosecution of electoral crimes

MODEL	IDENTIFIED IN
<b>Election crimes are investigated, prevented and prosecuted by the ordinary criminal justice system</b>	Bolivia, Colombia, Costa Rica, Nicaragua, and Paraguay
<b>Election crimes are investigated, prevented and prosecuted by a specialized prosecutor's office</b>	Brazil, Dominican Republic, Guatemala, Honduras*, Mexico, and Panama

\*The Special Unit for Electoral Crimes within the Public Prosecutor's Office is only operative during election processes and is then dissolved.

In this regard, EOMs have identified institutional capacity, criminal legislation, and procedural aspects that hinder the proper exercise of the *ius puniendi*. Accordingly, various recommendations have been issued. See Table 17 for some examples.

**TABLE 17.** Examples of recommendations on electoral crimes and offenses

Consider creating a specialized prosecutor's office for electoral crimes to ensure their proper investigation, prevention, and prosecution.
Study the crime of coercion to determine the time frame in which it is committed given the restrictions included in the legislation.
Verify that the criminalization of the most frequent offenses is sufficient to ensure their prosecution in order to eliminate them.
Conduct a comprehensive analysis of the criminal framework in electoral matters to verify that misconduct and punishment maintain adequate and coherent proportionality.

## 7. Institutional design

The administrative functions of electoral bodies must be subject to challenge to ensure transparency and certainty in electoral processes. In some cases in the region, institutions perform both administrative and jurisdictional functions. Therefore, EOM recommendations suggest considering reforms to separate these functions, assigning the administrative and jurisdictional tasks to different bodies to prevent the same entity from organizing and judging the process.

See **Table 18** for the existing models in various countries in the region.

**TABLE 18.** Existing models of administrative-electoral/jurisdictional functions

MODEL	IDENTIFIED IN
<b>Administrative and jurisdictional functions performed by different authorities</b>	Colombia, Dominica, Dominican Republic, Ecuador, Guyana, Honduras, Mexico, Peru, The Bahamas, and United States of America
<b>Administrative and jurisdictional functions performed by a single authority</b>	Bolivia, Brazil, Costa Rica, El Salvador, Guatemala, Nicaragua, Panama, and Paraguay



## Conclusions

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Between 2017 and 2021, OAS/EOMs have evaluated the rules, mechanisms, and institutions responsible for the administration of electoral justice, bodies responsible for ensuring that elections are free, fair, and legitimate, as well as for defending the political-electoral rights of all individuals. As stated in the reports analyzed, EOMs have observed elements that constitute the two main components of these systems: ensuring that electoral processes conform with the legal order and international standards and providing fair mechanisms to restore electoral rights when they are violated.

In this context, it is logical that, during the period covered by this study, almost half of the recommendations issued have focused on the regulations/standards and on the processes and legal remedies.

According to EOM observations and recommendations, there are still significant opportunities for improvement to ensure that the rules governing electoral processes in the region are more precise. EOMs have particularly highlighted the need for all actors to have more certainty about their implementation, ensuring that rules are enforced systematically and uniformly for everyone. It is also necessary to ensure the coherence of legal frameworks so that processes, mechanisms, and timelines are compatible with the development of electoral processes and ensure effective justice.

As shown in the reports, recommendations have prompted analysis, discussion, and, in some cases, regulatory adjustments, which seek to contribute to the progress and consolidation of robust electoral justice systems in the region. However, for the effective enforceability of these rules, it is crucial that the judicial bodies have sufficient and timely human and financial resources, and that programs are established for the professionalization of their staff, including, for example, a judicial career service specialized in electoral matters and a promotion regime within electoral judicial bodies. Investing in specialization and professionalization will not only improve the administration of electoral justice but will also foster the perception of impartiality and independence of the institution.

At the same time, progress in professionalizing bodies and implementing technological tools should be oriented towards developing innovations in transparency and accountability so that an accessible and reliable system is guaranteed for all actors. EOM reports have identified some good practices. Still, there are also areas for improvement in ensuring that anyone can access the bodies' proceedings, resolutions, and rulings and that this information is available in open data formats and in user-friendly and intuitive systems.



EOMs have also emphasized the need to establish or strengthen systems of electoral crimes and offenses, so that they include gradual penalties and are effectively implemented by the State to provide electoral processes with greater confidence and certainty. An effective system of electoral crimes and offenses is essential to deter undesirable behavior in the framework of electoral processes. To that end, it will be necessary to continue consolidating institutions with clear powers, and their human and financial capacities, to ensure the effective execution of their mandate.

VI.

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