

# ELECTORAL STUDIES IN COMPARED INTERNATIONAL PERSPECTIVE



## Election Campaign Regulations in 18 Latin American Countries



United Nations  
Development Programme

*Empowered lives.  
Resilient nations.*



# ELECTORAL STUDIES IN COMPARED INTERNATIONAL PERSPECTIVE



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IN COMPARED  
INTERNATIONAL PERSPECTIVE  
ELECTION CAMPAIGN REGULATIONS IN 18 LATIN AMERICAN  
COUNTRIES**

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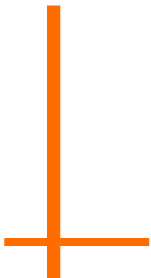


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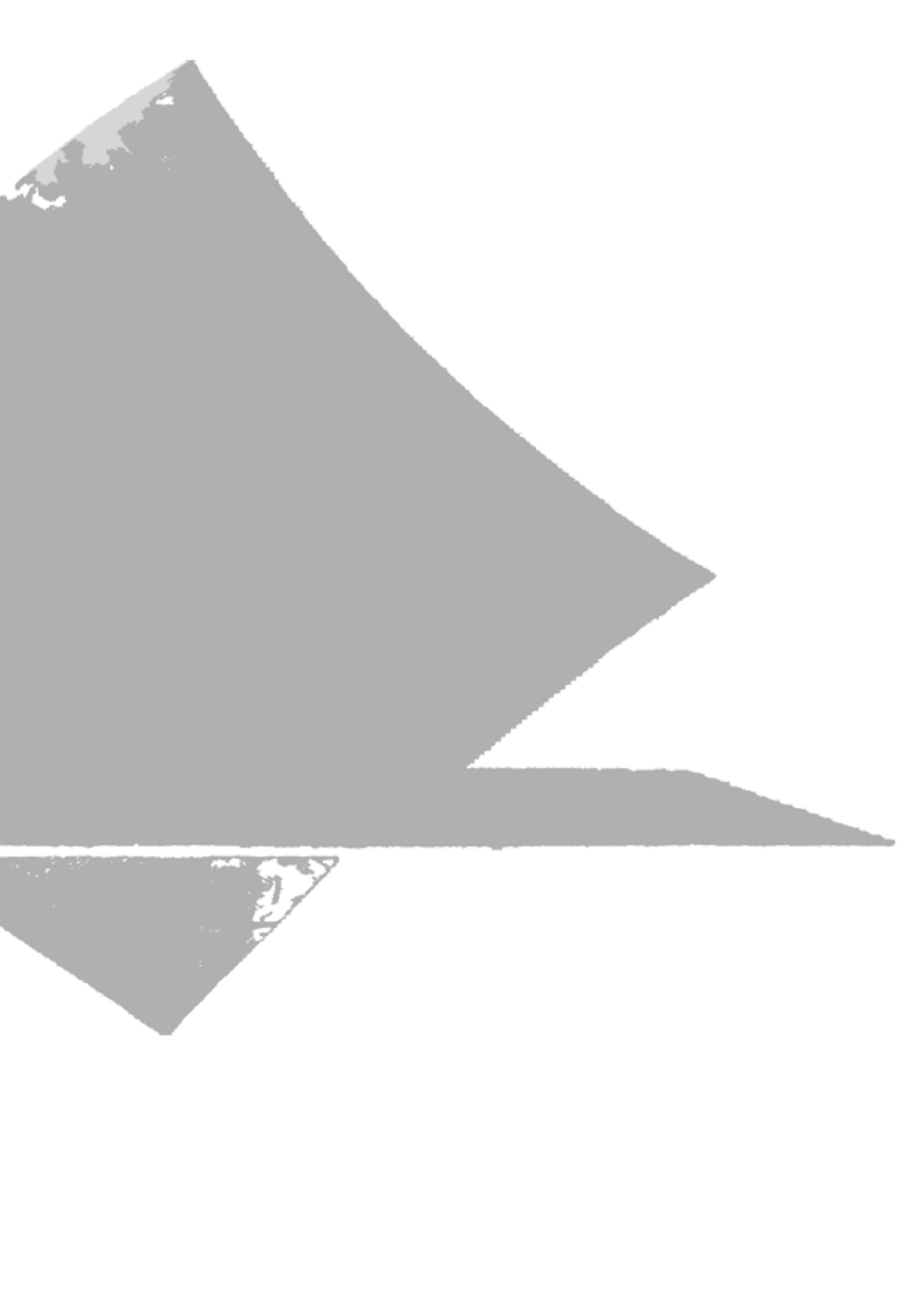
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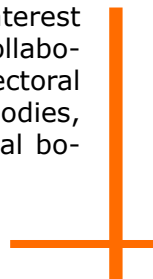




## PREFACE

Within the framework of international cooperation that has started with the creation of the IFE's International Affairs Unit in 1993, and with the understanding that elections have become a more specialized field of knowledge and practice, special emphasis has been placed on encouraging projects that can contribute to producing, disseminating and/or exchanging specialized knowledge from a global and comparative perspective.

The Institute has accomplished four specific objectives with the momentum and settling of these initiatives. Firstly, to provide electoral stakeholders, including its staff, with information on electoral systems from different parts of the world and from a compared perspective. Secondly, to provide representatives and electoral specialists in other countries with the necessary information to be able to take over the tasks from international observation and technical assistance missions. Thirdly, to back up the activities INE's International Centre for Electoral Training has been carrying out in collaboration with UNDP and the Electoral Tribunal of the Federal Judiciary. Lastly, this initiative opens new spaces and opportunities for international knowledge exchange and fosters and strengthens the collaboration in areas of interest among electoral management bodies from around the world. These collaboration and exchange has also taken place in the context of technical-electoral assistance missions between INE and other electoral management bodies, within the framework of electoral assistance provided by international bodies, including UNDP.



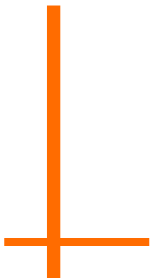


Based on the above, the INE is proud to present the second issue of the series of compared electoral studies, which focuses on 18 Latin American countries, that have introduced or re-established a solid democratic institutionality. This factor paired with significant affinities and common challenges faced by the political-electoral systems of these countries, make this series especially relevant.

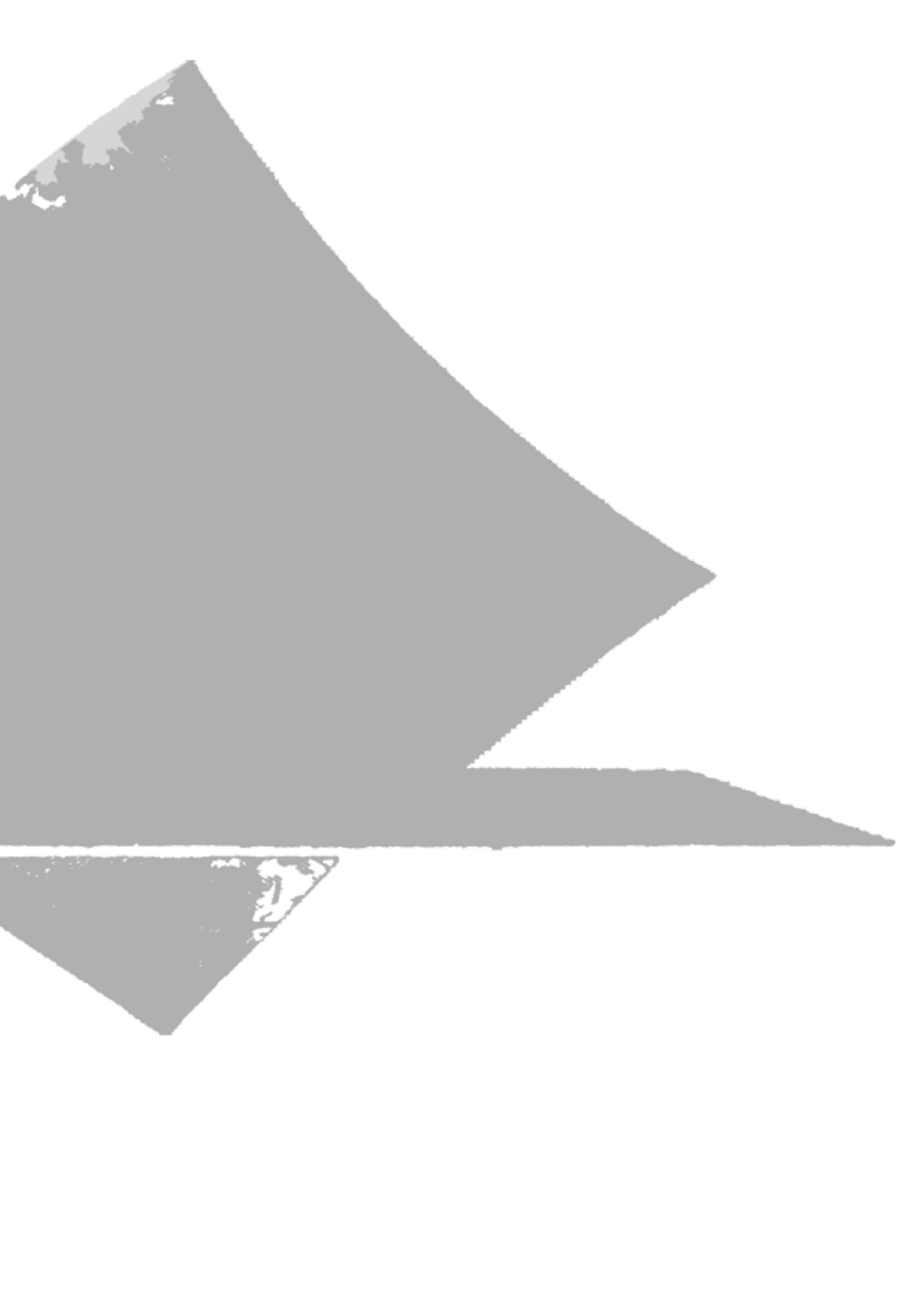
This second issue offers a general and comparative overview of the current situation, challenges and outlooks for electoral campaign regulations in these 18 Latin American countries.

We hope that this effort will be useful for our readers and encourage them to look deeper into the study and reflect and exchange opinions and experiences on the topic of election campaign regulations.

**Manuel Carrillo Poblano**  
***Chief of Staff, International Affairs Unit***  
**National Electoral Institute**









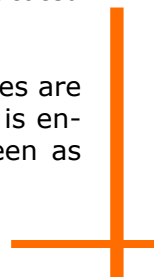
## I. INTRODUCTION

Greater openness or liberalization in the political system and the adoption of regulations and mechanisms to ensure free, fair and transparent elections have emerged to a varying extent during recent decades in most Latin American countries. They represent a positive trend that has brought significant changes to the political and electoral arena. Among the most notable changes are those related to the increasing plurality of partisan systems, often resulting in vigorously competitive electoral contests. Partisan systems are understood, in a broad sense, to incorporate new or at least varied ways to organize and seek political representation.

In nearly all countries of the region, partisan systems have changed significantly, which largely reflects the growing plurality and heterogeneity of the societies whose interests these systems seek to articulate and represent politically. Almost simultaneously, the contest for votes and for access to positions of popular representation has become more vigorous and competitive.

The 20th century came to a close in this region with a promising show of rooted and lasting regulations, institutions and procedures for conducting and processing the political struggle by electoral means. Yet the dawn of the new century has seen vigorous and at times fierce competition for the popular vote, bringing into play an increasingly broad and more sophisticated repertoire of strategies, tools and resources.

Serious asymmetries, deficits and setbacks persist (and in some cases are aggravated) in other areas of social and economic life.<sup>1</sup> Therefore it is encouraging that the plurality and competitiveness of elections are seen as dominant trends in the region's political and electoral arena.





From this perspective, it is not surprising that the debates over the terms and conditions of the electoral contest are also acquiring a growing importance on the political and legislative agenda. These debates may refer to and focus on varied and very specific matters; for example, campaign financing and the use of media outlets for electoral purposes have both acquired a privileged place in this discussion. However, they can all be encompassed in semantic and normative terms under the umbrella of ‘election campaign regulations’.

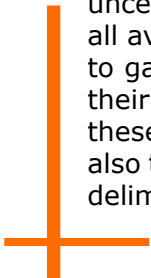
Despite the importance of the issue of election campaigns in the analysis, debate and regulation of electoral processes, there is very little specialized literature on the meaning and significance of this concept, nor on its scope and development, particularly from a comparative point of view.<sup>2</sup>

This combination — the importance of the topic and the lack of specialized literature that addresses it — acted as a powerful incentive for this study’s core objective: to offer a general and comparative overview of the current situation, challenges and outlook for election campaign regulations in the 18 Latin American countries on which this series of studies has focused. We further aspire to establish a point of reference that will contribute to reflection and debate of this topic, while at the same time encouraging the production of other more rigorous and in-depth studies.

There does not seem to be much difficulty in applying a common meaning to the term ‘election campaign’. It refers to a real or symbolic plane which is easily understood and relatively precise: a delimited period during which the contenders in an election perform proselytizing and publicity activities to win votes.

That said, as we attempt to specify, substantiate and examine in greater detail the different components of this characterization, a series of complications arises. These relate to the varying terms through which these components and their contents are understood and regulated in each specific case, regarding the conditions, demands and expectations of each national context. They also and more fundamentally relate to the challenges arising in the process of regulating this complex issue given the new dynamics and realities which characterize today’s electoral contest.

As the electoral contest has become more competitive, there have been efforts to maximize the democratic principle of ‘certainty in the rules and uncertainty in the results’. At the same time, the contenders attempt to use all available means and resources (which are not always established by law) to gain the greatest advantage in seeking the public’s vote, thus increasing their chances of victory. The heart of the matter is not only that many of these means and resources are increasingly varied and sophisticated, but also that they are increasingly difficult to define and establish within a clearly delimited regulatory framework.





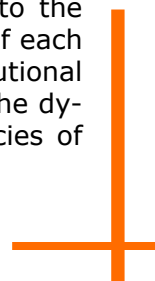
This creates a natural tension between the contenders' proclivity to explore and exploit all available options to gain an advantage in the electoral contest, and the demands of different opinion groups that these options be regulated according to democratic principles. This has become the focus of intense debate involving a variety of contentious issues. For example, this includes proselytizing or electoral publicity activities performed prior to the terms established for the start of campaigning has become so common in some contexts that it has acquired presumed permissibility, resulting in the concept (extrapolated from the world of political communications) of politicians who conduct permanent campaigns.<sup>3</sup> The contentious issues also include other activities which seek electoral success, not in promoting the benefits of the candidate's policies or proposals, but in discrediting, either directly or more subtly, those of his/her opponents. This is referred to, depending on the context, tone or intensity, as negative campaigning, mudslinging or 'black campaigns' (*campañas negras*).<sup>4</sup>

The debate on and attempts at regulation become more complex when these problematic issues relate to the use of different technologies. This includes new technologies (the internet, Twitter, Facebook, mobile phones, SMS messages etc.) as well as more subtle, and even subliminal, means offered through certain conventional media outlets. For example, insertion of paid advertising during the broadcasting of mass media entertainment or as part of recorded debate programmes on television can be used to circumvent certain legal controls or restrictions.

Regulating the contest for votes is based on and justified by the need to safeguard, protect and uphold a set of rights and freedoms that figure among the most important assets in democratic life. Therefore a question naturally arises about what exactly should be regulated and to what extent the contest in general should be regulated — i.e. starting first with a problem of extension or breadth, and then expanding into one of level or intensity.

Based on a merely contextual reasoning, we might start by saying that there is no unanimous or unequivocal answer to this question. However, this should not prevent us from noting, and throughout this study proving, that the general trend in the region is of a gradual but systematic expansion of regulation on activities related to election campaigns and the democratic contest.

As mentioned above, a large part of the reasoning and motivations which drive this trend and which assign objectives and specific contents to the concept of regulation refer to the circumstances, needs or demands of each specific country. Yet it is also true that due to the strong legal/institutional and social/cultural similarities shared by these countries, as well as the dynamics of the globalizing context in which they exist, the democracies of Latin America also face common problems and challenges.





Many of the campaign regulations being implemented in the region are carried out and understood to provide the electoral contest with a legal framework. While guaranteeing the full exercise of the rights and freedoms resulting from it, this also seeks to establish conditions of equity among contenders and non-interference or neutrality on the part of government authorities.

Indeed, one thing that distinguishes Latin American electoral regimes is their emphasis, in recent times, on meeting demands and expectations with respect to equity in the electoral contest. The precise meaning or specific manifestations of the term 'equity' may be open to debate. For our purposes this concept is conceived as an essential element that balances the conditions of competition between disparate political forces (e.g. levels of social implementation, prior performance in elections, and ability to access financing), expressed through a set of legal regulations which seek to prevent such disparities or improper interference by government authorities (and, in certain aspects, other axes of power) from limiting their efforts to win votes or from having a decisive impact on their ability to do so.

It is important to point out how difficult it is to meet expectations of equity, because it can involve limitations or restrictions on certain rights or freedoms. As rights and freedoms may be considered equally important and laudable, restrictions tend to result in conflict, and there may be confrontation with the interests of other groups or sectors which might not have the same capabilities to defend or advocate for such interests. Therefore, from an evaluative perspective, it can be argued that the lack of equity in an electoral contest may conspire against its legitimacy and its results. Likewise, it must also be accepted that some efforts to incorporate or expand legal provisions aimed at ensuring conditions of equity may create tensions or conflict with other principles, rights or freedoms upheld or guaranteed by law (which might require some kind of compromise).

It is the search for a point of equilibrium between disparate forces in the electoral contest which best defines the concept of equity in the area of political and electoral competition. This equation can only be adequately addressed when taking into consideration the conditions, needs, demands and capabilities of each specific context.

From this perspective, and as indicated above, information on the region's predominant trends clearly shows a gradual yet systematic expansion of regulations related to election activities. This topic is broad and diverse, showing variations, disparities and particularities in each specific area. To make sense of it, we have grouped them into the following topical categories:

- defining or delimiting their basic elements: objective, authorized subjects, activities and duration;
- processes for internal selection of candidates;





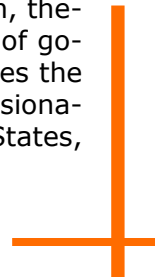
- financing control;
- access to and use of electronic media outlets;
- contents of publicity;
- use of public funds and resources;
- opinion surveys;
- debates; and
- system of penalties

The method used to present these topics is very simple. One chapter is dedicated specifically to the discussion of each of these categories, specifying their meaning and scope, detailing the repertoire of regulations through which they are expressed, and presenting the relevant information for each of the countries examined, while also including any pertinent comments and remarks. The study concludes with a regional comparative overview, highlighting some of the most significant characteristics and attempting to put into perspective some of the most important challenges faced in recent times on this issue, most notably those challenges which relate to the powers and duties of election authorities.

Before beginning this discussion, it is appropriate to outline the method and approach of this study. First, the regulations described and reviewed are those which apply at a national level. This may be an obvious assertion for unitary states (which are a majority in this region). However, this must be taken into account for federal states, such as Argentina and Mexico. In those states federal law establishes a clear distribution and separation of powers with respect to elections between the federal government and the entities which comprise the larger State, resulting in the possibility of federal or national elections being governed by regulations different from those governing state or provincial elections.

Second, this study focuses on campaigns for elections to select or reinstate candidates for elected public office, and not on those for the application of the so-called instruments of direct democracy such as referendums, citizen legislative initiatives or recalls, which are increasingly common in the region.<sup>5</sup>

Third, in large part, the assertions or considerations made regarding election campaigns and their governing regulations refer specifically to national elections and, more specifically, presidential elections. This is because the presidential system is the archetypal form of governance in the region, therefore the most important in terms of the configuration and exercise of government functions. More fundamentally, it is because it best embodies the new constraints and styles of campaigning (highly personalized, professionalized and media-based) which, manufactured originally in the United States, are now used almost everywhere around the globe.<sup>6</sup>

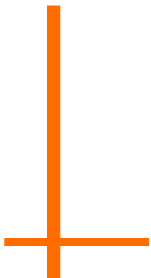




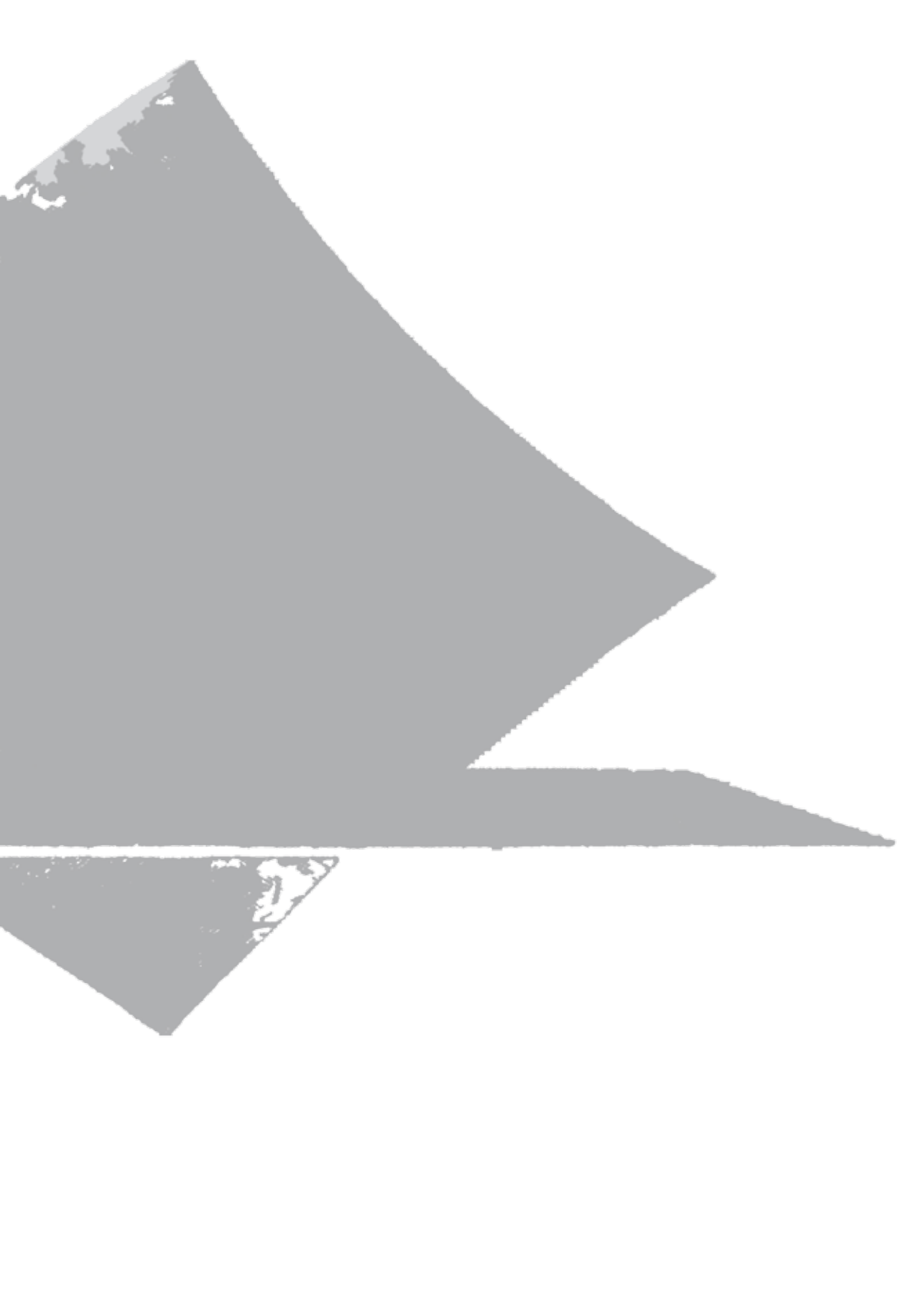
Naturally, not all campaigns conducted in the region have or must have these attributes. There are significant differences between one context and another; even within a single context there may be differences in the varying types of elections or between the many contenders, for a wide variety of reasons. However, these are the vectors which best describe the dominant trends in the region.

Finally, the implications of some legal provisions for the functioning of election authorities are of special significance for the aims of this study. In the gradual expansion of regulations for electoral competition, a correlative expansion is noted in the nature and scope of the powers of election authorities. These powers correspond increasingly to functions of arbitration between interests that are frequently at odds as a result of the electoral contest itself, and less to conventional administrative functions for the election process, where the predominate role is to foster consensus between the contenders regarding the objectives they share.

In other words, in exercising the legal powers granted to them to ensure that legal provisions and norms related to campaigns are upheld, it is more likely that authorities will fall foul of one of the contenders or interests at play, thereby resulting in or increasing the possibility of their role as arbiter being called into question. We consider this one of the greatest challenges for election authorities resulting from the expansion of regulations governing election campaigns.







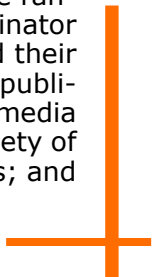


## II. CONCEPTUALIZATION OF CAMPAIGNS AND THEIR BASIC ELEMENTS

As discussed above, the term 'election campaign' refers to a set of ideas which are easily discerned and more or less well defined, and which relate to a set of activities carried out by the contenders in an election to attempt to influence the preferences of voters and earn their votes. This all occurs within the framework of an electoral process and during a predetermined period of time, which tends to conclude shortly before election day.

Assuming this definition projects a clear idea of what 'election campaign' might mean, we might also agree that there are four essential and separate elements contained within this meaning, and use this separation to develop, understand and apply the regulatory framework more easily:

- a. the **objective** or **purpose** of campaigns. In a conventional sense, to win votes;
- b. the **actors** or **protagonists** in the contest. Essentially the parties and candidates but could easily also include the directors, representatives, activists and sympathizers of the parties or other types of organizations which put candidates forward;
- c. the **activities** carried out to achieve the above objective, which, generally speaking, can be divided into two large categories, so as not to complicate the matter: in-person activities, comprising a wide range of public events and private meetings, the common denominator being the presence of the candidates and/or party directors and their direct involvement or interaction with attendees; and election publicity or advertising activities, which are implemented through media outlets, especially electronic media, but also through a wide variety of printed materials which are placed or distributed in public places; and





- d. the **term** or **period of time** during which these kinds of activities are permitted, more specifically, the dates or acts that mark its beginning and its culmination or conclusion.

When initially attempting to systematize and contrast the provisions contained in the laws of the countries examined in relation to these four elements, and thus to achieve a general overview of how election campaigns are delimited and conceptualized in the region, it becomes evident that the different laws handle the above elements very disparately. Not only do the location and degree of relationship of these provisions within each respective legal framework differ, but also the concept of 'campaign' itself is not used consistently and has no single definition.

Indeed, one might assume, given the importance of this issue (since campaigns constitute the practical centre of gravity of electoral processes), that legal provisions on this matter would have their own exclusive or at least specific chapter within a certain law, acknowledging their importance and seeking their integration and articulation. As shown in Table 1, there are significant variations between the legal passages (chapters or sections) bearing the definitions or basic provisions on campaigns where applicable. Also, there is an express mention of the term 'election campaigns' in the title or heading of the passages in only eight of the 18 countries (Argentina, Colombia, Ecuador, Honduras, Mexico, Nicaragua, Uruguay and Venezuela).

Most often these basic definitions or provisions are incorporated within untitled passages dedicated to election publicity or advertising, as is the case in eight countries: Bolivia, Chile, Costa Rica, El Salvador, Guatemala, Panama, Paraguay and Peru. This demonstrates that in most cases the fundamental reference to electoral campaigns is made in provisions relating to election publicity and advertising. This is predicated on the difficulty of conceiving campaigns in a more comprehensive sense: not limited to that advertising and publicity activities alone (no matter how much these activities may define or reflect the essence and most expressive sense of election campaigns) or on the relatively undifferentiated use of both terms.

**TABLE 1**  
LEGAL PROVISIONS RELATING TO BASIC REGULATIONS ON ELECTION CAMPAIGNS

Country	Basic Legislation*	Main Chapter or Section
Argentina	National Electoral Code (2009)	Title III on Pre-election Acts Chapter IV bis on the Election Campaign (Articles 64 bis, ter, and quater)
	Act on the Financing of Political Parties (2009)	Title III on Election Campaigns Chapter III bis on the Electoral Publicity at the Audiovisual Communication Services (Articles 43 bis — 43 nonies)
Bolivia	Elections Act (2009)	Various Articles: 17, 26, 27, 28, 36, 39, 43, 44, 45, 73



**TABLE 1**  
**LEGAL PROVISIONS RELATING TO BASIC REGULATIONS ON ELECTION CAMPAIGNS**  
**(CONTINUED)**

Country	Basic Legislation*	Main Chapter or Section
Brazil	Electoral law (2009)	Various articles: 17, 26, 27, 28, 36, 39, 43, 44, 45, 73
Chile	Organic Constitutional Act 18,700 on Popular Votes and Vote Counts (2012)	Title I — Acts in Preparation for Elections Paragraph 6 on Publicity and Advertising (Articles 30–35)
Colombia	Act 1475 on the Organization of Operation of Political Parties and Movements (2011) Regulatory Act 996 on the Presidential Election (2005)	Title III — Election Campaigns (Articles 28–40) Title I — General Provisions (Articles 1–4)
Costa Rica	Electoral Code (2009)	Title III — Political Parties Chapter VII — Political Advertising and Information (Articles 136–142) Title IV — Electoral Process Chapter I — Preparatory Acts (Article 149)
Dominican Republic	Electoral Act 275 (2010)	Title XII — Elections Section II — the Election Period (Articles 88–94)
Ecuador	Organic Electoral and Political Organizations Act (2009)	Title III — Financing and Control of Electoral Expenditure Chapter I — Electoral Campaign, Advertising and Expenditure Limits (Articles 202–210)
El Salvador	Electoral Code (2012)	Title XII — Elections Section II — the Election Period (Articles 88–94)
Guatemala	Electoral and Political Parties Act of 1985 (2004)	Book IV — Electoral Process Sole Title — Development of the Electoral Process Chapter IV — Election Advertising (Articles 219–223)
Honduras	Electoral and Political Organizations Act (2009)	Title IX — Permanent Political Activity, Election Campaign and Political Demonstrations (Articles 140–149)
Mexico	Federal Code of Electoral Institutions and Procedures (2008)	Book Five — Electoral Process Title II — Acts in Preparation for the Election Chapter III — Election Campaigns (Articles 228–238)
Nicaragua	Electoral Act 331 (2012)	Title VII — the Election Campaign (Articles 86–108) Chapter I — Election Advertising (Articles 86–89)
Panama	Electoral Code (2013)	Title V — Electoral Expenditures and Facilities Chapter III — Election Advertising (Articles 196–209)
Paraguay	Electoral Code of 1996	Book V — Advertising (Articles 285–306)
Peru	Organic Act 26859 on Elections (1997)	Title VIII — Election Advertising (Articles 181–195)
Uruguay	Act 18485 on Political Parties (2009)	Chapter II — Election Campaigns Section I — Campaign Managers (Articles 15–19) Section IV — Controls for the Election Campaign (Articles 33–38)
Venezuela	Organic Act on Electoral Processes (2009)	Title VI — Election Campaign (Articles 71–90)

\* The year in parentheses corresponds to the most recent edition or amendment.

The two most extreme cases either fail to group together or systematize the basic regulations on campaigns within a specific section (Brazil) or refer to them in a section whose title does not include either the concept of the campaign or that of election advertising or publicity (Dominican Republic). However, these discrepancies with respect to the naming or systematization of provisions on campaigns do not necessarily correspond to any lack of extensiveness or thoroughness in the regulatory framework itself.

We will now further develop the specific nature of each of these cases:



## 1. THE OBJECTIVE OR PURPOSE OF CAMPAIGNS

Appendix 1 shows that there are 14 countries whose laws contain an express and relatively clear mention of the objective or purpose of campaigns or, where appropriate, of election advertising. (This specification is given because, as mentioned before, in some countries regulation refers to the broader and more comprehensive concept of campaigns, while others limit such regulation to the concept of election advertising.)

The indiscriminate use of both concepts (and the use of the terms 'publicity' and 'advertising') may be open to debate, and perhaps in certain circumstances or from certain perspectives it may even be necessary to distinguish between these concepts. Thus in at least three countries which use the overarching concept of 'campaigns' (Honduras, Mexico and Venezuela) the law introduces a further separation or specification regarding the meaning of advertising.

Notwithstanding the above and the terms of its phrasing, given that some provisions are very succinct or general while others are more broad or precise, the common denominator here is their essential objective or purpose: winning votes. Normally, this aim is established in a propositional sense, while in some cases it is established as a means of edification. Such is the case of Panamanian law, where election authorities are charged with ensuring that election advertising encourages the presentation of "agendas and actions aimed at resolving national or community problems" and that their content be "inspired by the strengthening of democracy, respect for human rights, and the civic education of the people".

The definition of what can be understood as contrasting or 'negative campaigning' and its effects on the behaviour of the voters are open to debate, where any side will always be able to provide empirical evidence to support their position. Yet it is important to highlight that most of the provisions which refer to the objectives of campaigns or of election advertising are stipulated in a positive or propositional sense. They establish a clear trend towards imposing a mechanism of containment, further strengthened with more specific provisions regarding the contents of election advertisements.

Later in this report we will discuss the prohibitions or restrictions imposed on the contents of advertising, many of which seek to favour propositional campaigns focused on promoting and disseminating ideas, agendas and proposals. However, it is worth mentioning here that (with perhaps one notable exception) the provisions which seek to support the objectives of campaigns or of advertising do not allow these to be used negatively.

The notable exception is Colombia, where the law explicitly states that campaigns must encourage an individual to vote in a certain way or to "refrain"





from doing so, thus extending permission for abstentionist campaigns which, on the contrary, are explicitly prohibited in countries such as Venezuela. The function of active abstention<sup>7</sup> within the democratic order (not to mention the promotion and facilitation of campaigns in favour of it within the legal/institutional order) is also very much open to debate, though outside the scope of this study.

## 2. INDIVIDUALS AUTHORIZED TO CONDUCT CAMPAIGNING

In a general sense, it is understood that the central protagonists of a campaign are those who are competing for the vote (i.e. the candidates), and that given the efforts involved in the activities conducted to win votes, the capacity to perform them is extended to the representatives of the organizations which put candidates forward (parties, organizations, movements etc.), to their representatives and to their members or supporters.

Thus it is logical and appropriate that legislation will tend to state that it is the right of the parties and candidates (and their managers, representatives, members or supporters, as appropriate) to perform activities aimed at winning votes, although acknowledgement of this right is not generally established or understood as excluding or restricting the involvement of other groups or individuals.

However, today it is evident that (given all that is contested in an election, especially within a framework of full democratic rights and liberties) the interests at play in an election have multiplied and diversified, and so too have the persons interested in the electoral outcome, having made attempts to influence the results. In this regard, it is also clear that the financial strength or capacity for media influence of these different and varying interested parties can be decisive in swaying the election one way or another.

In light of this, and given the inability to impose arbitrary restrictions on the freedoms of individuals and organizations to take part in the contest and attempt to influence its result, or to exhaustively list the acts or conducts which are permitted by each of them, the approach which can and has been used is that of imposing clearly delimited prohibitions, restrictions or obligations as to who can or cannot perform certain acts which relate to or can influence campaigns or the behaviour of the electorate, as we will discuss later in this study.

## 3. CAMPAIGNING ACTIVITIES

It is widely accepted that campaign activities aimed specifically at winning votes can be divided into two overarching categories: 1) traditional or conventional activities, involving direct contact between party directors, candidates or their representatives and a group of their followers or potential voters, such as gatherings in public spaces, home visits or meetings in in-



door spaces; and 2) modern or media-based activities characterized by the (intensive) use of media outlets, especially electronic media, which must include the so-called 'new technologies', as well as other means of publicity (including everything from distributing advertising in public places to displaying advertising using aircraft) to bring the message to much larger and more diverse segments of the electorate.

Even among the pioneering works in the region, where the handling of the issue of election campaigns has come to include a series of criteria to differentiate between the types of campaigning activities, these efforts stand out for their supplemental nature.<sup>8</sup> Today the argument can be taken further still, suggesting that both modalities can be used in combination and simultaneously.

As publicity and advertising in particular offer fertile grounds for creativity, it would be practically impossible to fully list the vast range of options (media, formats, tools) available for election campaigning activities. As such, laws often limit themselves to offering an indicative catalogue of the type of activities which may be performed as part of a campaign. They may, at most, distinguish between the two categories described above or, for the sake of greater precision, indicate which activities are subject to prohibitions, restrictions or exceptions.

Argentine law, for example, cites campaign activities including mobilization, dissemination, advertising, opinion gathering and communication, presentation of agendas and projects, and debates, though it specifies that academic activities, conferences and symposiums are not considered part of campaigns. In Chile election advertising in cinemas and video showrooms is prohibited; as is advertising using stationary or mobile speakers, unless they are used to transmit speeches being given at public gatherings.

Collectively, the most common prohibitions refer to the placement of advertisements on monuments and public buildings, temples or churches, or on private property without express consent. In light of growing demands for regulation and control (especially for environmental and aesthetic reasons) of the placement of advertisements in public roadways and spaces (which is prohibited in Costa Rica), it is interesting to note that a provision in Guatemalan law remains which prohibits any restriction on the free use of poles or lines along public roadways for placing advertisements. It is also common that to hold gatherings or rallies in public spaces, prior request for authorization, or at least formal notification to the competent (usually local) authorities, must be made.

Brazil earns accolades as the first country in the region to adopt campaign regulations which extend, in addition to campaign finance regulation and control of campaign expenditures, to an issue no less complex and elusive: that of vote buying or coercion. It has done so by acting, despite the complaints it may inspire, with regards to one of the most emblematic activities



of many campaigns, at least in most countries in the region: free distribution of utilitarian items. Brazilian law prohibits distribution of “t-shirts, key chains, caps, basic food items or any other good or product which may hold sway over the voter” by parties and candidates (or with their authorization) during campaigns.

To infer and (even more challenging) prove or document that the free distribution of utilitarian items constitutes, especially when occurring in a general manner, a practice that may gain an advantage in the contest is a rather difficult task which leads to a series of additional questions. Of course, it is very different if, for example, the items distributed are consumer staples, come from the misallocation or manipulation of social programmes or are delivered conditionally (a situation which is not far from the realities experienced in the region).

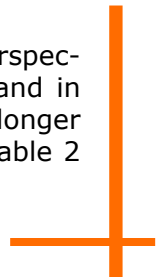
To venture an opinion as to the implications or effects resulting from the adoption and application of this type of regulation would fall outside the scope of this study. In any case, what we wish to highlight is, first, the innovative nature of the provisions adopted in Brazil to tackle a multidimensional and complex problem which, undoubtedly, is strongly rooted in several places in the region; and second, there have already been repercussions outside its borders, as the most recent Ecuadorean laws prohibit, albeit somewhat more laconically, parties and candidates from delivering to citizens “donations, handouts or gifts”.

Incidentally, as part of the actions taken against vote buying, Brazilian law considers such actions potential grounds for the annulment of an election, while in countries such as Costa Rica they are considered punishable violations.

Brazilian law is also unique in prohibiting artists or musicians from performing during public campaign activities (ingeniously referred to as *showmícios*, a combination of the Portuguese words for ‘show’ and ‘rally’) or any type of similar event to promote a candidate, as well as the presentation (compensated or otherwise) of performers to enliven or attract a larger number of spectators at election events. This prohibition affects a practice which, though perhaps not as emblematic as free distribution of utilitarian items, is equally widespread in the region, and has important implications for the issue of spending control and equity in the contest.

#### 4. TIMING OF CAMPAIGNING

The issue of the timing of campaigns can be studied from different perspectives. The most obvious one relates to the duration of campaigns, and in this regard the debate would focus on how pertinent or desirable a longer or shorter duration might be, as well as the consequences thereof. Table 2 presents the pertinent data for the countries from the region.





**TABLE 2**  
**REGULATIONS RELATING TO THE DELIMITATION OF THE ELECTION CAMPAIGN**  
**AND/OR ADVERTISING PERIOD**

Argentina	The campaign begins 35 days before election day, and advertising begins 25 days before; both end two days before.
Bolivia	The campaign begins 90 days before election day, and advertising begins 30 days before; both end three days before.
Brazil	Advertising begins after 5 July of the year of the election and ends two days before (elections are held on the first Sunday in October).
Chile	The campaign begins 30 days before election day and ends three days before.
Colombia	The presidential campaign lasts 120 days. Campaigns for other positions last 90 days, and advertising is allowed for 60 days; all must end two days before election day.
Costa Rica	The campaign begins with the call for election (four months prior to election day) and ends three days before election day (elections are held on the first Sunday in February).
Dominican Republic	The elections proclamation must be published by authorities at least 90 days before the elections, and advertising must end one day before election day.
Ecuador	The authorities specify the duration of the campaign in the call for election, though this period cannot exceed 45 days and must end two days before election day.
El Salvador	Advertising for presidential elections: 120 days; for the election of deputies: 60 days; and for the election of municipal councils: 30 days; all must end three days prior to election day.
Guatemala	Advertising begins with the call for election (2 May of the election year) and ends 36 hours before election day (elections are held on the first or second Sunday in September).
Honduras	The campaign begins 90 days before election day and ends five days before.
Mexico	The campaign lasts 90 days in the case of general federal elections and 60 days for interim legislative elections; they all must end three days prior to election day.
Nicaragua	The campaign for presidential and legislative elections lasts 75 days. For other positions it lasts 45 days. They all must end three days prior to election day.
Panama	The process begins four months prior to election day, and campaign activities are prohibited during the two days before election day.
Paraguay	The campaign lasts a maximum of 60 days, and advertising 30 days; both must end two days prior to election day.
Peru	The process begins with the call to election, which authorities must issue between 150 and 120 days prior to the election. Advertising must end one day before election day.
Uruguay	Election advertising can only begin 30 days prior to election day and must end two days before election day.
Venezuela	The National Electoral Council will establish for each electoral process the period of the election campaign, as well as the specific regulations for the same, though in all cases they must end two days before election day.



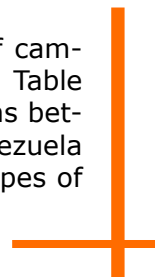
First, regardless of whether a campaign is carried out in terms that distinguish between the different types of campaigning activities or in terms strictly relating to advertising, there are three cases in which the start or term for such activities is not clearly defined. Indeed, in the Dominican Republic, Panama and Peru there are no laws that expressly govern the beginning or required duration of campaigns. Therefore, the formal call for elections, which is explicitly established, marks not only the formal start of the electoral process but also the start of election campaigns. What these three countries do have are provisions that determine when campaigning activities must end. In this regard, Colombia stands out as the only country where the law does not expressly require a period of silence for campaign activities prior to elections.

Venezuela can also be included within this category, as it empowers the election authorities (National Electoral Council — CNE in Spanish) to determine during each electoral process the duration of the campaigns and the specific regulations to be applied; the law does not establish a predetermined duration for campaigns. For example, for the presidential elections in October 2012 the CNE established a campaign period of just over three months, while for the legislative elections in 2010 it was just over one month.

Second, in four countries a distinction is made between conventional campaigning activities and activities carried out using mass media advertising, establishing different periods for both (which are longer for conventional activities): Argentina, where the difference is 10 days; Bolivia, where the ratio is three to one; Colombia, where this differentiation does not apply to presidential elections; and Paraguay, where the ratio is two to one. A common element in all four countries is that, irrespective of the differences in the duration of conventional campaigning activities, media advertising is restricted to 30 days.

In the 10 remaining countries no such distinction is made, so campaigns have a standard length. However, in six of them (Chile, Costa Rica, Ecuador, Honduras, Mexico, and Nicaragua) there is express mention of campaigns in general, while the other four (Brazil, El Salvador, Guatemala, and Uruguay) refer specifically to the dissemination of election advertising. In several countries the concepts of 'campaign' and 'advertising' are used indistinctly, as the laws of Chile and Costa Rica, for instance, do not contain any section entitled or dedicated to campaigns, though this term is used when referring to their duration.

Third, certain regulations establish different terms for the length of campaigns, depending on the type of elections in question. As shown in Table 2, this situation occurs in five countries, although with some variations between them. In Colombia, El Salvador and, as mentioned above, Venezuela the duration of presidential campaigns is longer than that of other types of





elections. This is because the presidency is the highest office within the political hierarchy of the State, and because these three countries are unique in that their presidential and legislative elections (at minimum) are carried out separately, which facilitates establishing different terms for the duration of campaigns.

In Nicaragua, where presidential and legislative elections are conducted simultaneously, the different terms for the duration of campaigns refer to other subnational elections (autonomous regional and municipal elections), which are also conducted separately, thus facilitating the inclusion and application of this distinction. However, in countries such as Chile, Costa Rica and Peru, where subnational elections are also held separately from national elections, there is no express provision whereby campaigns must have a different duration.

The case of Mexico is unique in that the difference in the length of campaigns refers exclusively to national elections, as the term for presidents and senators is six years and that for deputies is just three, meaning that between two general elections in which all such offices are contested there is a mid-term election in which the members of the lower house only are elected or re-elected. Thus, for general elections, all campaigns last 90 days, while for mid-term elections for deputies the duration is 60 days.

Mexico is a federal State with, as in Argentina, a clear jurisdictional division for elections between the federation and the entities that compose it, whereby the latter retain the authority to regulate their own electoral processes and thus also the terms of the corresponding campaigns. As such, in these two cases, the records do not take into account any provisions regarding the duration of campaigns for subnational elections. While in Argentina there are also mid-term legislative elections, there is no distinction equivalent to that of Mexico with regard to the duration of these campaigns.

The other federal State from the region, Brazil, deviates from this logic, as the electoral organization at all levels of government is governed by regulations at a national level. Furthermore, the duration of all elected offices is the same, and officials are all elected or re-elected on the same day as part of a general national election day.

As shown in Table 2, the duration of election campaigns in the region varies: at one end of the range is Peru, where campaigns can extend to up to five months, and at the other are Argentina, Chile and Uruguay, where they last just one month, especially for advertising activities. This range may seem quite expansive, but for a number of reasons which should be clear, recent years have seen a gradual but systematic trend towards reducing the duration of campaigning in the region. As recently as the late 1990s, in countries such as Bolivia, Honduras, Mexico and Panama, presidential elections,



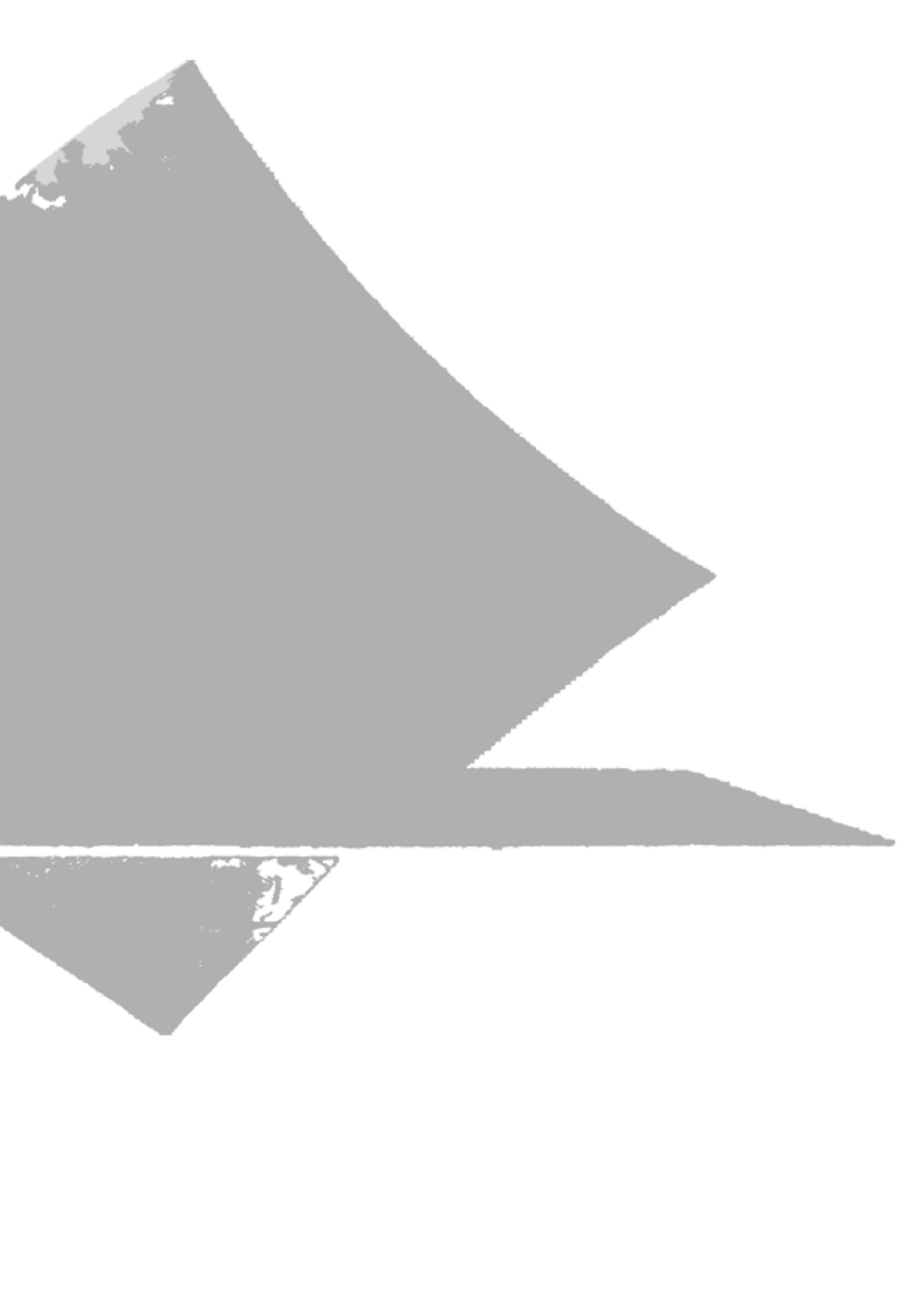
for example, could continue for up to six months, while in others, such as Argentina, there were no legal provisions as to when the campaigns might begin.

Based on the system used to elect presidents, in 13 of the 18 countries from the region (all but Honduras, Mexico, Panama, Paraguay and Venezuela, where a plurality system is used) it is possible for a second round of elections to be required to determine the winner, and, as such, a new campaign period is implemented in which only the top candidates or tickets take part. While these 13 countries have express provisions regarding when the second round must occur (varying between three weeks in Brazil and Colombia and two months in Bolivia), only the laws of Nicaragua (21 days) and Uruguay (15 days) expressly establish the duration of the respective campaign periods.

It is also important to stress that establishing exact terms for campaign activities is essential to guarantee conditions of certainty in competition, so that all contenders and interested parties, including election authorities, are clear as to the period during which activities aimed at obtaining votes may be carried out. However, specifications as to when a campaign starts and ends can only be effective to the extent that the violation of such terms (such as conducting campaign activities prior to the start of the period) results in some type of penalty, and better still, that the penalty is able to dissuade or prevent the repetition or expansion of such violations. Otherwise, there is a risk that regulations will lack effective meaning in regulating the contest.

Of course, it is similarly important that definitions as to what constitutes a campaign activity be as clear and precise as possible, so that there are parameters or reference points to differentiate such activities from proselytizing activities, which are essential for political parties and organizations and tend to be permitted on an ongoing basis.









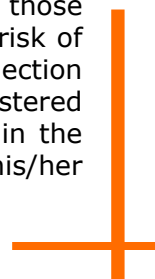
### III. PROCESSES FOR INTERNAL SELECTION OF CANDIDATES

It might be argued that the issue of the internal selection of candidates for public office is more an internal matter for political parties or organizations and is also generally completed prior to the start of the election and campaigning processes. However, in some cases political parties have been required to perform open internal elections to select their candidates, as part of the gradual yet increasing trend in the region towards regulation of the internal life of political parties. This aims both to respond to common demands and to promote democratization objectives.

Thus there is a possibility that, for verification purposes, regulations similar to those for a standard electoral process might be adopted, including, consequently, regulations related to campaign activities, in this case rightly referred to as pre-campaigns. The argument may also be offered that regulation of internal candidate selection processes involves the allocation of specific responsibilities to election authorities which are predicated on another focus of this study: the systematic expansion of the regulatory framework and the powers of election authorities.

There are three countries in the region (Argentina, Honduras and Uruguay) whose legal framework establishes the obligation of political forces to select their candidates for public office (at least at a national level) through open internal elections, which are at times called 'primary' elections (*primarias*).

In all three countries internal elections are both open and simultaneous, meaning that any registered voter may take part in them, not only those affiliated with the varying political forces, which always involves the risk of non-members or non-supporters intervening or affecting a party's selection process. This risk is countered by holding internal elections for all registered parties on the same day, during which voters may only participate in the selection process of one party, regardless of whether that party is his/her party of preference.





Thus it is not unusual that, given their specificity, these elections have begun to be subject to regulations to ensure certainty and legal security, and that these regulations have become equivalent to those of regular campaigns. The best example of this trend is in Argentina. The so-called Democratization Act requires that parties hold simultaneous, open and mandatory primary elections on the second Sunday of August during the election year, providing a 30-day period for campaigning, which is limited to 20 days for audiovisual advertising, as well as the conclusion of both two days prior to election day. There are both state subsidies and expenditure ceilings for the (pre-) campaign, as well as a prohibition on political groups purchasing radio and television advertising and an obligation that a consolidated and detailed report of income and expenditures be submitted to authorities no more than 30 days after the election. In addition, on the day of internal elections and during the 15 days prior, the government is prohibited from performing acts which may encourage voting for any of the primary candidates for national elected office.

In Honduras and Uruguay legal provisions governing the holding of open and simultaneous internal elections are more generalized and far from reaching this level of density and precision. Nevertheless, they do share one key element that has become a central focus for this study: that of granting election authorities significant powers in the organization, administration and oversight of these elections. Thus in Honduras the Supreme Electoral Tribunal is responsible for the control and supervision of these elections, receiving support from the electoral commissions created by the political parties for this purpose. In Uruguay not only does the Electoral Court have jurisdiction over all matters relating to the organization of internal elections, but it is also responsible for hearing any disputes arising from these elections and their results.

Furthermore, although open internal elections are not mandatory in Mexico, they are also covered by a dense and very sophisticated regulatory framework for national elections. In addition, despite being optional, Mexican law regulates these elections in such detail that it dedicates an entire chapter to this topic, including the characterization of these elections, distinguishing between campaigning acts and publicity, the terms during which such acts are permitted (60 days for general elections and 40 days for mid-term legislative elections), and the time at which they are to begin, establishing that any early act of proselytism or dissemination is punishable with the pre-candidates' removal from the race.

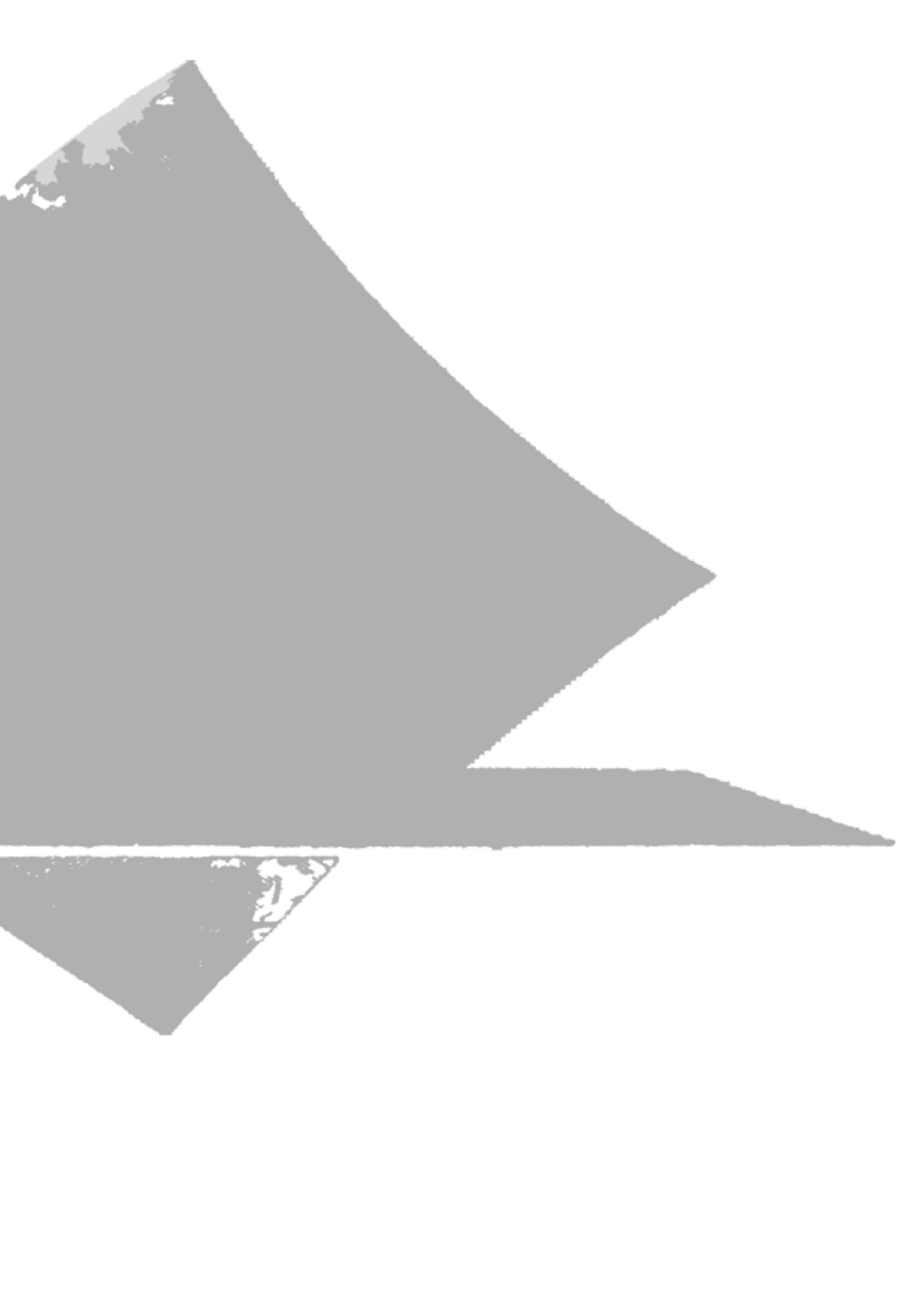
(Pre-) campaign expenditures are subject to limits, and violation of these limits results in the cancellation of the candidates' registration in the internal election or loss of candidacy if the offending candidate has won the primary election. The parties are required to submit to election authorities a detailed report of (pre-) campaign income and expenditures for each of their pre-candidates no more than 30 days after the internal selection processes.



These regulations are applicable to any procedure whereby the political parties, in accordance with their bylaws, choose to select their candidates for the presidency or the Federal Congress, and not only in the case of open internal elections.

There are other countries (Chile, Colombia, Ecuador and Peru) whose laws include express mention of the option for political parties to, if so established in their bylaws, hold open internal elections to select their candidates for public office. Yet there are no specific regulations as to how they must conduct their (pre-) campaigns, except in Colombia, where the norms governing ordinary elections must also be applied, where appropriate, with respect to financing, publicity and access to media outlets. It is more common, as in other countries such as Bolivia, Costa Rica, Panama and Venezuela, for powers to be granted to election authorities to manage, control or assist in the organization of internal elections, or even to provide final resolution in any disputes arising in this regard.







#### IV. CAMPAIGN FINANCING CONTROL

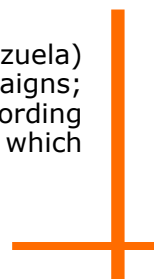
Regulation and control of election campaign financing represent a microcosm of the broader universe that comprises the funding of politics and political forces. This microcosm is also often conceived and operated as a variable that supplements the provisions set forth to regulate ongoing financing of political parties.

While a discussion of that broader universe<sup>9</sup> falls well beyond the scope of this study, we will address this issue based on the differential treatment of three of its essential elements: public subsidy, regulation of private financing, and mechanisms for accountability, including at the beginning of each element an essential reference to the provisions employed in the region to regulate the financing of political parties. Given the clear link to the issue of financing, this section also seeks to review cases in which restrictions are imposed on campaign expenditures.

It is important to note that given the nature, dynamics and growing importance of this polemic issue, regulations on this matter are among those most altered in recent years, as part of the ongoing reform processes that also characterize the region.

##### 1. DIRECT PUBLIC SUBSIDY

In 15 of the 18 countries reviewed (all but Bolivia, Ecuador and Venezuela) a direct state subsidy is established for parties and/or election campaigns; these subsidies, *grosso modo*, are applied in three ways defined according to the purpose for which they are allocated and the periods during which resources are spent:





- Eight countries (Argentina, Colombia, Costa Rica, the Dominican Republic, Mexico, Panama, Paraguay and Uruguay) stand out because they allocate funds regularly (in annual or monthly instalments, for example) throughout the period between elections. Yet these funds are expressly or implicitly understood as subsidizing the ongoing organizational and operating expenses of political parties (in some cases this is specifically established by law), supplemented with additional amounts distributed only during the election period to subsidize expenses relating to election campaigns, which in some cases also benefits, where appropriate, independent or non-partisan candidates.
- In three countries (Brazil, Guatemala and Peru) a subsidy mechanism equivalent to the primary instalments from the previous group is established, meaning that a subsidy is provided regularly throughout the period between elections. Unlike the case of the previous group, this primary subsidy is not supplemented with additional outlays during election periods aimed expressly at subsidizing campaign expenses. The fact that there is no additional amount expressly aimed at supporting (or reimbursing) election expenses does not mean that the regular subsidy cannot be allocated to such purposes (if there is any subsidy remaining at that point), at least in Brazil and Guatemala. Peru is unique in that the law expressly provides that public subsidy must be used exclusively for training, research and educational activities (as is the case in other countries, such as Argentina, Costa Rica, Mexico and Panama, though not exclusively) or for expenditures from ordinary operations. However, as it happens, since its adoption in 2007, this subsidy has not been implemented.
- In the other four countries (Chile, El Salvador, Honduras and Nicaragua) the only subsidy mechanism used is aimed at reimbursing campaign expenditures during election periods.

In sum, there are 12 countries (eight from the first group and four from the third) where a specific subsidy is used for campaign expenditures, which does not necessarily mean that ordinary public financing cannot be used to fund campaign expenditures. Along this same line of analysis, we must consider an opposing argument: that the parties (and candidates) which correspond to the third group may encounter an additional disadvantage if they do not have access to the subsidy prior to elections.

Table 3 shows some of the basic indicators regarding the method and terms whereby public subsidy is allocated to campaigns in these 12 countries.

As we can see, in four countries (Chile, Colombia, Honduras and Panama) public subsidy is extended to individual candidates, meaning that in these countries independent candidates for different publicly elected offices are acknowledged. It is important to highlight that, except for Honduras, inde-



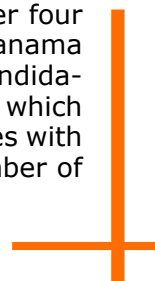
pendent candidates (like parties) can receive an advance payment of the subsidy prior to the election, which allows them to receive certain financial support before the election outcome is known. In Honduras independent candidates do not enjoy this privilege, and their access to the subsidy, which occurs after the elections, only materializes if they manage to win their respective elections.

In Mexico a constitutional amendment was passed in 2012 establishing acknowledgment of independent candidates; as of the date of the conclusion of this study (June 2013), this has yet to be implemented federally, but it will undoubtedly result in profound transformations in the legal mechanism established to regulate competition and subsidize election campaigns.

Regarding the method used to determine the amount of the public subsidy distributed among recipients for campaign expenditures, we have found that the one most commonly used (six countries) is based on the respective electoral share and, more specifically, on the number of valid ballots cast, assigning a predetermined value to each vote. This value tends to be linked to some financial unit (unidades de fomento in Chile, minimum daily wages in Paraguay, or unidades reajustables in Uruguay), which is regularly updated based on the inflationary index or to a monetary value that is adjusted periodically (Colombia and El Salvador). The exception is Honduras, where the value per vote has been kept constant at HNL20 (approximately US\$1). In countries such as Chile and Paraguay, the value per vote varies depending on the office.

Three countries (the Dominican Republic, Nicaragua and Panama) have chosen to determine allocation as a pre-established percentage of the annual state budget (0.5 per cent in the former, and 1 per cent in the latter two), while in Costa Rica a limit of 0.19 per cent of Gross Domestic Product has been established, and authorities are able to determine the exact amount within that range. In Argentina there is one extraordinary state budget outlay, which the Executive is authorized to determine. In Mexico the election subsidy corresponds to an additional percentage of that which is calculated and allocated each year to ordinary party activities: 50 per cent in general federal election years and 30 per cent in mid-term legislative election years. The amount of the annual subsidy for parties is in turn determined by multiplying a percentage of the daily minimum salary by the number of registered voters.

In eight countries the criterion used to distribute the election subsidy among parties and (where applicable) candidates is strictly proportional to their respective electoral strength as expressed in votes obtained. In the other four countries a mixed or tempered proportional formula is used, while in Panama a mixed formula is used for parties and a proportional formula for candidates. In the Dominican Republic the subsidy corresponding to parties which exceed the 5 per cent threshold is distributed in equal parts, and parties with a smaller share of the vote receive a subsidy proportional to the number of votes obtained.





**TABLE 3**  
TERMS FOR ALLOCATION OF PUBLIC SUBSIDIES FOR CAMPAIGN EXPENDITURES

Country	Recipients*	Amount of subsidy
Argentina	Political parties	Extraordinary allocation (not specified) for each post
Chile	Political parties and candidates	Depends on vote received (predetermined amount per vote)
Colombia	Political parties and candidates	Depends on vote received (predetermined amount per vote)
Costa Rica	Political parties	Up to 0.19% of GDP
Dominican Republic	Political parties	0.5% of the state budget
El Salvador	Political parties	Depends on vote received (predetermined amount per vote)
Honduras	Political parties and candidates	Depends on vote received (predetermined amount per vote)
Mexico	Political parties	Amount equal to a percentage of the ordinary subsidy
Nicaragua	Political parties	Percentage of the ordinary subsidy
Panama	Political parties and candidates	1% of the state budget
Paraguay	Political parties	1% of the state budget
Uruguay	Political parties	Depends on vote received (predetermined amount per vote)





**TABLE 3**  
**(CONTINUED)**

Criteria for Allocation	Time of payment	Requirements
Mixed: 50% egalitarian and 50% proportional to vote received	Prior to election day	Registration
Proportional to vote received	Advance payment prior to election day, including new parties	Registration
Proportional to vote received	Advance payment prior to election day, including new parties	Minimum threshold of vote received
Proportional to vote received	Advance payment prior to election day, including new parties	Minimum threshold of vote received or one seat
Egalitarian for parties obtaining more than 5% of the vote and proportional for remaining parties	Prior to election day	Registration
Proportional to vote received	Advance payment prior to election day, including new parties	Registration
Proportional to vote received	Advance payment prior to election day, but only for pre-existing parties	Minimum threshold of vote received or one seat
Mixed: 30% egalitarian and 70% proportional to vote received	Prior to election day	Registration
Proportional to vote received	After election day	Minimum threshold of vote received
Mixed for parties and proportional for candidates	A certain percentage prior to election day and the remainder afterwards	Registration and express request
Proportional to vote received	After election day	Minimum threshold of vote received and accountability
Proportional to vote received	Advance payment prior to election day, including new parties	Registration

*Throughout this document, the term 'political party' is used in the broadest possible sense, to include the many different types of organizations which the region's laws entitle to participation in electoral processes, including alliances and coalitions expressly created for that purposes.*



For equity purposes the timing of the subsidy is especially relevant (receiving the subsidy prior to elections can expand financial manoeuvrability for parties and candidates), as are the requirements for receiving the subsidy. In three countries (Argentina, Mexico and the Dominican Republic, where parties also receive public financing for ordinary activities) the total amount of the election subsidy is given prior to elections; in seven, a portion or advance payment is given prior to election day, and another is given after it; and in two countries (Nicaragua and Paraguay) it is given after the elections, although in Nicaragua, unlike Paraguay, the parties do not receive public financing for ordinary expenses, so they may face complications in paying campaign expenses.

Among the seven countries in which parties and candidates receive some type of advance payment, except for Honduras this advance includes, in some form or another, recently created parties, allowing them a slightly more comfortable financial position to face the challenges of a campaign. There are different methods used to determine or calculate the amount of advance payments, but the most common involves using the results of the previous election as the basis (for newly created parties, an amount equal to that of the party with the least votes is allocated, and the same amount is distributed equally among independent candidates); then, based on the results of the new election, a final calculation is made to determine the necessary deductions and adjustments.

Due to their somewhat different approach, two cases stand out: in Panama the advance payment to independent candidates depends on the number of supporters presented to obtain registration; and in Uruguay the advance payment is given using a mechanism to assign the rights of the beneficiaries to the Bank of the Oriental Republic of Uruguay, or to institutions, private companies or individuals, provided the bank is expressly notified.

Regarding the requirements to access public campaign financing, in seven countries legal registration of the candidates (parties and candidates, where appropriate) is sufficient to receive funding (in Panama they must also formally notify authorities that the subsidy is accepted). In the other five countries they must obtain a minimum percentage of votes or one seat to guarantee receipt of this benefit, which poses no additional problems in two countries (Nicaragua and Paraguay) where the subsidy is given after the election and once it is verified that the required threshold has been met. The matter is a bit more complicated in three countries (Colombia, Costa Rica and Honduras) where an advance payment is given but a minimum threshold is required, which results in the need to consider provisions and implement mechanisms to recover advance payments given to those who fail to meet the required threshold.

## 2. PROHIBITIONS OR RESTRICTIONS ON PRIVATE FINANCING

Regulations which tend to be imposed on contributions (in cash or in kind)



made, as permitted by law, to finance parties and campaigns and not received from state coffers can be grouped into two overarching categories: those relating to their origin or provenance, and those establishing limits on their amount.

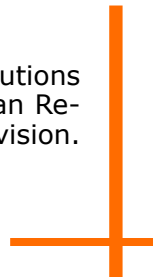
Prohibitions or restrictions on the origin of contributions seek to suppress contributions from sources that may be susceptible to introducing unpermitted dependencies or improper influences on the organization and operation of the parties or in the development of the contest for the vote, as well as , and where possible, in the exercise of legislative or government functions by those who end up being elected to public office. The category of prohibited or restricted sources can include those established based on the obvious constraints of the legal order and democratic principles (ranging from illegal activities such as organized crime and drug traffickers to anonymous sources which can hide such illicit origins, and also including government contractors or concessionaires which might give in to the demands of the party in power). It can also include other sources that have been strictly established based on the experiences, conditions or requirements of each society.

Establishing limits on the amount of contributions seeks to prevent a level of concentration and a subsequent potential dependency on a specific source. This could compromise or reduce the margins of autonomy of parties and candidates, again, both in the decisions they make in their organization or in the contest for votes and in the exercise of their legislative or government functions.

As already noted, there is an abundance of literature<sup>10</sup> offering information of interest and insightful reflections on the complex relationship between money and politics and, more specifically, regarding the regulation of campaign and party financing. However, while, in general terms, restrictions on sources and amounts of contributions imposed on the financing of political parties tend to cover electoral periods, and as such are valid for electoral campaigns, it is also true that there are certain particularities in the region that are worth mentioning (see Table 4).

Since El Salvador passed a law on political parties in early 2013, there are now regulations and restrictions on financing sources and/or amounts in all countries in the region. While there are prohibitions in all countries relating to certain sources of financing, in three countries (Chile, Colombia and Ecuador) these are expressly established for campaigns only, not for ordinary financing of political parties and organizations. In Colombia this prohibition affects only the contributions of legal entities or 'legal persons' and solely for presidential campaigns.

The laws of 12 countries establish limits on the amount of contributions made by subjects authorized to do so, while Costa Rica, the Dominican Republic, Honduras, Nicaragua, Panama and Venezuela have no such provision. The 12 countries can be divided into three groups.





**TABLE 4**  
**REGULATIONS ON PRIVATE FINANCING**

Country	Prohibited Sources	Limits to Contributions Made to Parties	Restrictions on Campaign Financing
Argentina	Yes	Yes	A party or coalition may not receive private contributions greater than the difference between the expense limit and the extraordinary government subsidy.
Bolivia	Yes	Yes	No. The same restrictions as those applied to the financing of parties.
Brazil	Yes	Yes	Individuals can make donations in cash or in kind to campaigns of up to 10% of gross income obtained during the year prior to the election.
Chile	For the financing of campaigns	No	There are specific limits for contributions to a single candidate and to a single campaign, but in any case the total amount which one person may contribute to different candidates or to one party may not exceed the equivalent in pesos of 10,000 financial units.
Colombia	For presidential campaigns	No	No party, candidate or campaign may receive loans or collect funds from private funding sources in an amount greater than the total amount they are permitted to spend in the respective campaign. They also may not receive individual contributions and donations greater than 10% of said total amount.
Costa Rica	Yes	No	No
Dominican Republic	Yes	No	No
Ecuador	For the financing of campaigns	No	Contributions by individuals may not exceed 5% of the maximum amount authorized for election expenditures for each candidate.
El Salvador	Yes	Yes	Individual contributions by physical or legal persons may not exceed 3.5% of the special budget approved by the Legislative Assembly for the electoral authority during the previous elections of the same kind.
Guatemala	Yes	No	No individual or legal entity may make contributions greater than 10% of the maximum limit on campaign expenditures.
Honduras	Yes	No	No
Mexico	Yes	Yes	No. The same restrictions as those applied to the financing of parties.
Nicaragua	Yes	No	No



**TABLE 4**  
**(CONTINUED)**

Country	Prohibited Sources	Limits to Contributions Made to Parties	Restrictions on Campaign Financing
Panama	Yes	No	No
Paraguay	Yes	Yes	In essence they are the same as those applicable to the financing of political parties, although anonymous contributions from lawful proselytizing activities are allowed, as long as they do not surpass the equivalent of 10,000 <i>jornales mínimos</i> ; also, the limit for contributions from natural persons or enterprises is increased from 5000 to 7000 <i>jornales mínimos</i> .
Peru	Yes	Yes	No
Uruguay	For the financing of campaigns	Yes	No. The same restrictions as those applied to the financing of parties.
Venezuela	Yes	No	No

First, there are five countries (Bolivia, El Salvador, Mexico, Peru and Uruguay) in which the limits are applied at all times to the financing of parties and thus include and are effective for election periods and campaigns. This approach is facilitated by the fact that these countries do not recognize independent candidates (noting that, as mentioned previously, Mexican regulation of these candidates is imminent) or the limits are not applicable to them, as in El Salvador.

El Salvador also bears special mention for two reasons. First, its new law includes a distinction in the limits applicable to individual contributions that can be made to political organizations during ordinary periods (up to 2 per cent of the electoral budget approved annually by the Legislative Assembly) and those that can be made in pre-election years, when the limit to individual contributions is increased to 3 per cent of the budget approved by the Assembly. Second, since 2011, as a result of a judiciary resolution, independent or non-partisan candidates can complete in Legislative Assembly elections, even though they are not granted any public subsidy, and the financing limits imposed on political parties and their candidates do not apply to them.

In Bolivia, as of the date this study was completed (May 2013), the electoral authority had yet to issue the new regulations for the control of financing of political organizations as provided by law, to be made in accordance with the legal framework deriving from the constitutional text passed in 2008. Thus the information included on this topic corresponds to the preceding legislation.



Second, there are four other countries (Chile, Colombia, Ecuador and Guatemala) in which limits on contributions apply only to the financing of election campaigns (see the final column of Table 4). And finally, in Argentina, Brazil and Paraguay, in addition to the limits imposed at all times on financial contributions to parties, there are additional limits for election campaigns (also detailed in Table 4).

### 3. CEILINGS ON CAMPAIGN EXPENDITURES

The idea exists that imposing ceilings on campaign expenditures can contribute to achieving several objectives, such as guaranteeing conditions of equity in the electoral contest, strengthening provisions to control election financing, and containing an evident trend towards a sustained (and at times excessive) increase in the cost of campaigns, thus responding to varying demands that emerge due to the complex relationship between money and elections. Therefore, it is not surprising that in the last 20 years these kinds of measures have aroused great interest in some countries in the region, resulting in the establishment of legal provisions in seven of them.

This expansionary drive foreseen only a decade ago would seem, however, to have ceased (although Paraguay did incorporate this in its laws as part of a series of reforms on political financing at the end of 2012). This is an approach which, in theory, is seen as commendable and attractive but which in practice results in serious challenges and complexities to ensure effective compliance. First of all, even on paper it is difficult to draw a clear dividing line between what can be understood as a campaign expense and expenditures related to the conventional activities or purposes of a political organization. But the challenges can be greater still when reviewing the range of powers, capacities, resources or instruments available to authorities to verify the credibility of expense reports, especially when authorities wish to perform some manner of in situ inspection or evaluation so as not to limit themselves to an ex post desk review.

In any case, there are eight countries in the region whose laws include establishing ceilings on campaign expenditures, though it is important to note that there are some variations between them. The conventional approach to establishing these ceilings is based on a rule or formula specifically provided by law, and it is usually the responsibility of election authorities to apply or calculate this formula. It is also common to distinguish between the different types of elections — i.e. a specific and unique limit for each office applied equally to all contenders. This is the model used in Argentina, Chile, Colombia, Ecuador, Mexico and Paraguay, albeit with some variations (see Table 5).

Brazil deviates from this standard. Its law establishes that for each electoral process a law be passed to set the applicable expense limits for each type of election, but it also provides that if such a law is not passed, the parties themselves set the limit for each of their candidacies. This involves notifying the authorities of this limit in a timely manner, so that the authorities may disseminate this information and conduct the corresponding control and



oversight activities. The practice that has prevailed thus far is that parties unilaterally establish their own expenditure ceilings, which represents a manifest violation of the principle of equity.

In Guatemala an approach was adopted which not only undermines this principle but also renders this standard virtually meaningless, by establishing a single and global limit for all campaigns. In effect, there is a single limit (equal to US\$1 for each voter registered as of 31 December of the year prior to the election) for all campaigns (from presidential to mayoral and including legislative), applicable equally to all parties regardless of the number of candidates they put forward.

As shown in Table 5, the provisions designed and implemented by the six countries following the conventional model vary greatly in terms of the factors considered for calculation, although the use of the number of registered voters nationally or in the varying electoral jurisdictions appears as a common thread. In Argentina there is a standardized value (ARS1) for campaigns for all federal offices, while in Chile the standard value varies by position and is generally greater for presidential elections.

**TABLE 5**  
LIMITS ON CAMPAIGN EXPENDITURES

Argentina	In presidential and legislative elections, campaign expenditures incurred by a party, its candidates and any other person on behalf of the same may not collectively exceed the amount equal to one 'electoral module' (determined by the Congress in the Budgetary Law) per qualified voter. In any case, it is considered that no district has less than 500,000 voters. For the second round, the limit is equal to ARS0.30 per voter.
Brazil	On no later than 10 June of the election year, a law must be issued establishing the ceiling on campaign expenditures for all contested offices; otherwise, each party will establish the limits for each of their candidates, notifying the election authorities of the limit when requesting registration.
Chile	For presidential elections, the ceiling is equal to the total number of registered voters multiplied by 0.03 financial units (UF, in Spanish), or 0.01 UF for the second round. For senators: 3000 UFs, plus 0.04 UFs multiplied by the first 200,000 registered voters; 0.03 UFs for the next 200,000, and 0.02 UFs for the remaining number of registered voters. For deputies: 1500 UFs, plus 0.03 UFs multiplied by the number of registered voters in the district. The limit for each party will be equal to one third of the total expenditure permitted for their candidates.
Colombia	The ceiling for election campaign expenditures for the different elected offices and councils will be established by the National Electoral Council in January of each year, taking into consideration the actual costs of the campaigns, the corresponding electoral census and the budgetary approval for state financing of these elections. The National Electoral Council will also indicate the maximum amount which each party or movement with legal personhood may invest in the institutional election campaign on behalf of their candidates or lists.



**TABLE 5**  
**(CONTINUED)**

Ecuador	Both for the election of the presidential ticket and for the national and provincial assembly members, the limit corresponds to the amount of US\$0.15 multiplied by the number of citizens recorded in the national registry or in the registry of the corresponding electoral district. For second round elections, the maximum expenditure permitted for each ticket is 40% of that which was determined for the first round. For the election of out-of-country assembly members: the amount of US\$0.30 multiplied by the number of citizens contained in the registry for the respective special district.
Guatemala	A global maximum limit of US\$1 for each voter registered as of 31 December of the year prior to the election.
Mexico	For the presidential election the maximum ceiling on campaign expenditures will be equal to 20 per cent of the public campaign financing established for all parties in the year of the presidential election. For the election of deputies under the principle of relative majority, the limit will be equal to the amount of the limit on campaign expenditure established for the presidential election divided by 300. For each formula in the election of senators under the principle of relative majority, the limit will be equal to the amount of the limit on campaign expenditure for the election of deputies multiplied by the number of districts contained within the federal entity in question. In no case will the number of districts to be considered be greater than 20.
Paraguay	The limit is equal to 10% of the <i>jornal mínimo</i> for each enfranchised voter in the registry where a candidate or list is registered.

Colombia has maintained a complex mechanism whereby limits of expenditures depend on the rather unorthodox formula used to calculate the 'actual value' of election campaigns, the results of the electoral census and the total of the state subsidy for the same purposes. For its federal elections Mexico has revised and simplified the also rather complex mechanisms adopted in the mid-1990s, now using a formula that depends on the limits of the total state subsidy given to the parties to pay for their campaign expenditures.

It is not within the scope of this study to attempt to explore how realistic, congruent or pertinent these varying provisions may be. Furthermore, the different nature of each reality and the complexity in establishing parameters with a certain validity or broad acceptance undermine our ability to undertake any exercise to compare these provisions. In any case, we must remember that any effort to evaluate or contrast a provision to limit expenditures must consider other factors which may affect its implementation — for example, the electoral system used to contend for office, as well as the regulations and restrictions relating to access to or purchase of advertising in media outlets, a key component of campaign expenses.

In this regard, it is especially important to note that in the two countries (Chile and Colombia) from this group which allow independent candidates limits are also imposed on the expenses which may be incurred by parties during campaigns to promote their own candidates, in addition to the ex-





pense limits imposed on the campaigns of all candidates. This undoubtedly places the candidates from apolitical parties in a privileged situation, inviting controversy as to the resulting implications for the principle of equity.

Also, although in six of the eight countries which impose ceilings on campaign expenditures (Mexico and Paraguay) the possibility exists, based on the electoral system, that a presidential election could be decided in a second round, in only three countries (Argentina, Chile and Ecuador) are there laws which expressly determine the expenditure limit applicable in the event of a second round. It is also worth noting that in Ecuador there is a specific ceiling on campaign expenditures for the campaigns of assembly member candidates who seek to represent voters residing abroad.

#### 4. ACCOUNTABILITY

A key and practically essential component of any legal provision that seeks to effectively control the financing of parties and campaigns is accountability. Although this is not the time to analyse this particular issue in detail, it is imperative to have a solid system of accountability and oversight<sup>11</sup> when seeking to exercise effective control over the source, handling and allocation of the resources flowing through the coffers of parties and campaigns. This guarantees adherence to the established legal precepts and, more important still, allows offenders to be appropriately penalized so as to maintain the rule of law and prevent perceptions of impunity.

Given the objectives of this study, we wish to identify whether or not campaign financing (income and expenditures) is subject to certain requirements and to a specific process of accountability. To develop a more complete overview of the accountability process, Table 6 indicates whether the contenders (parties/candidates) are required to submit financial reports on their income and campaign expenses (the terms of which are detailed in Appendix 2), as well as whether or not there are accountability requirements for the ongoing or ordinary financing of political parties or organizations.

**TABLE 6**  
**ACCOUNTABILITY OBLIGATIONS**

Country	Ongoing Financing Control	Campaign Financial Reports
Argentina	Yes	Yes
Bolivia	Yes	Yes
Brazil	Yes	Yes
Chile	Yes	Yes
Colombia	Yes	Yes
Costa Rica	Yes	Yes
Dominican Republic	No	Yes
Ecuador	No	Yes
El Salvador	No	No



**TABLE 6**  
**(CONTINUED)**

Country	Ongoing Financing Control	Campaign Financial Reports
Guatemala	Yes	Yes
Honduras	Yes	Yes
Mexico	Yes	Yes
Nicaragua	No	Yes
Panama	No	Yes
Paraguay	Yes	Yes
Peru	Yes	Yes
Uruguay	Yes	Yes
Venezuela	No	Yes

As the information from Table 6 indicates, although El Salvador has recently introduced reforms to regulate the financing of political parties and election campaigns, they did not include any obligations or requirements for the competent authorities to ensure accountability; they only establish the duty to facilitate citizens' access to information on public and private financing. Nevertheless, the law passed on non-partisan candidacies for the national Legislative Assembly does require the candidates to present income and expense reports to the electoral authority.

In the other 17 countries there are express accountability obligations which can be grouped into two overarching categories based on their specific focus. First, there is a large contingent of 12 countries that impose both an obligation to submit accounts for the ordinary finances of the parties (usually once per year), as well as an obligation to do the same during each electoral process, by way of campaign income and expenditures. Then there are five countries (the Dominican Republic, Ecuador, Nicaragua, Panama and Venezuela) where accountability is required only for campaign income and expenditures, with no similar requirements for ordinary party finances. Nicaragua and Panama have an additional particularity: accountability applies exclusively to the allocation of public financing provided to cover election expenses, not to financing received from private sources.

One notable variation relates to the time when the required financial reports must be submitted. The idea has gradually gained traction (translating into express legal provisions) that, to facilitate the control and oversight functions of the competent authorities or to encourage a more informed electorate, accountability processes should be started prior to election day, thus establishing the obligation of parties and/or candidates to submit partial or preliminary reports on campaign income and expenditures prior to the elections.

In eight countries there are preliminary accountability provisions, while Costa Rica, Guatemala and Venezuela require a submission of monthly re-



ports beginning on the date of the call for elections and throughout the entire election period. In Venezuela there is even a mandatory automated system through which political organizations' daily transactions can be recorded for control and accountability. In Brazil two reports must be submitted prior to the election, while in Argentina, Mexico and Uruguay just one preliminary report is required. In Argentina the report needs to be submitted 10 days before the election.

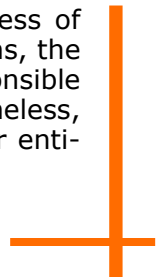
Needless to say, for these kinds of accountability requirements to serve effectively as a reference for voters interested in making an informed choice, there must be an express and categorical mandate for public disclosure of the financial information submitted prior to election day. Indeed, and at least from a legal point of view, this end is only achieved in Brazil, where the law expressly requires that parties and candidates make both reports public prior to the election through an internet portal established by the election authorities.

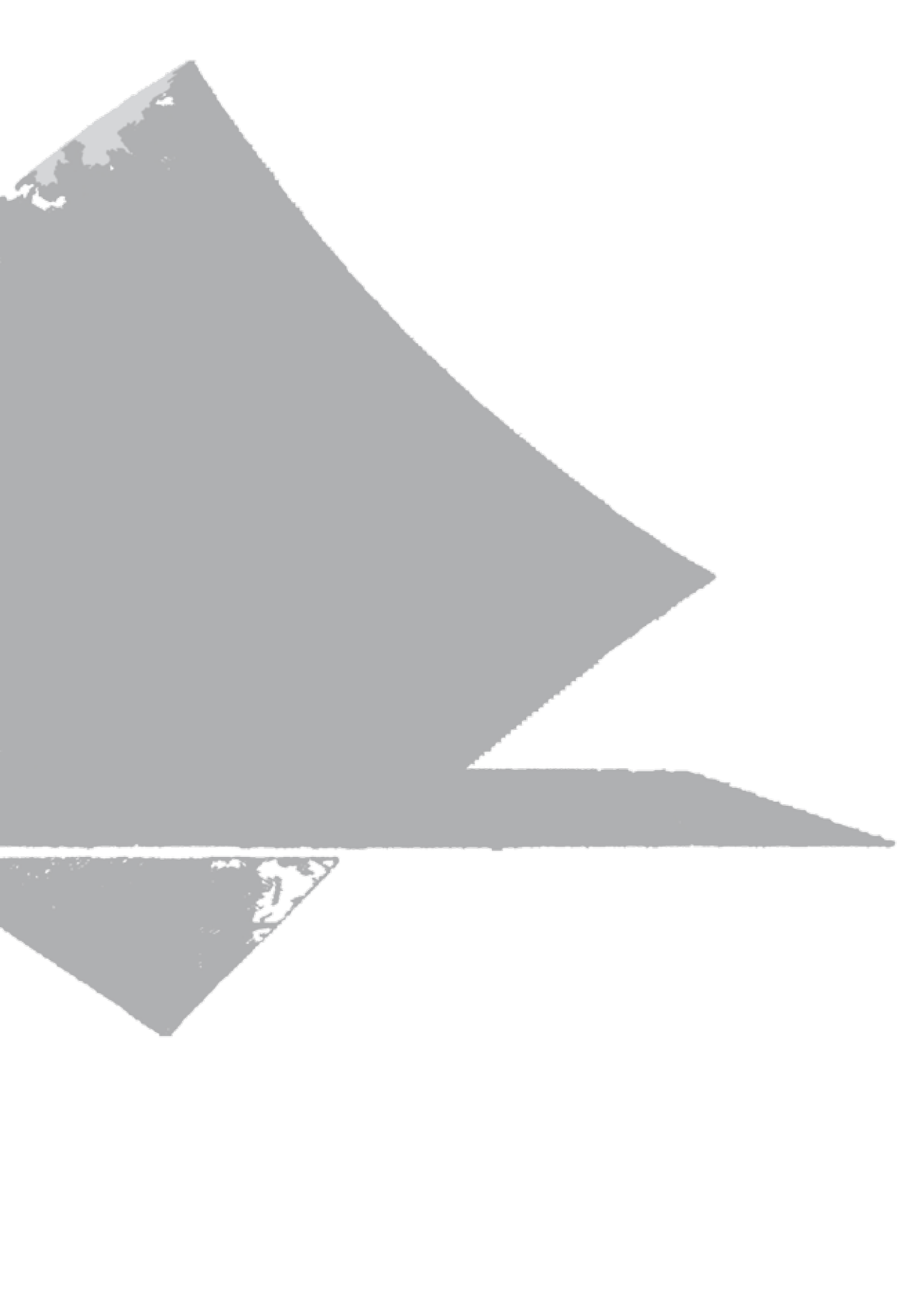
Bolivia can be considered part of this group because its law demands that the political organizations that may legally take part in the electoral process submit an updated balance sheet of their assets, including their sources of financing, at the time of the call for election.

Generally, in the countries that do require submission of preliminary financial reports, as well as those that do not, the accountability process culminates in the submission of a final or consolidated report on campaign income and expenditures after the election. Costa Rica, however, requires that these reports be submitted monthly throughout the election period, as was mentioned before, with no obligation to submit a consolidated report. In Guatemala, which also requires simplified monthly reports during the election period, a final consolidated report is requested, but as an attachment to the annual financial report which political parties must submit each year.

In the two countries where control or accountability is limited to funds received by way of public subsidy, though the laws of Honduras establish, in effect, the submission of a report on income and expenditures, there is no firm deadline to do so (the same is true in Nicaragua). In Panama, however, the law authorizes the election authorities to oversee the handling of public funds, though this does not include the submission of a report within a predetermined period. The other 12 countries do establish delivery of a report on income and expenditures based on firm deadlines, which vary from 30 to 90 days after election day, except Peru, where the deadline is set at 30 days after the finalization of the election process.

Finally, it is important to highlight that, as a general rule, regardless of their powers or their capacity to ensure compliance to such regulations, the entities responsible for organizing the elections are also, in fact, responsible for the control and oversight of campaign and party financing. Nevertheless, some countries such as Nicaragua, Panama and Paraguay have other entities, the Comptrollership, which is also responsible for this.







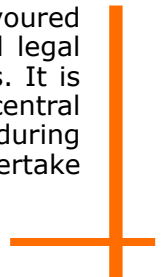
## V. ACCESS TO AND USE OF MEDIA OUTLETS

It is relatively simple to assert that, whether used by individuals for entertainment, information (or at times misinformation) or interaction with their immediate environment (or even a transcending reality), media outlets have a presence, have acquired a use and can hold significant and at times excessive sway in the lives of ever larger segments of the population in many parts of the world.

Politics and election processes and contests are no exception to this trend. They have even come to change in form and content to achieve clearer expression or the greatest possible utility through a range of media outlets which are increasingly varied, versatile and sophisticated.<sup>12</sup> It is very unlikely that any candidate with serious aspirations to occupy representative office, especially in national or regional offices, would lack a media plan and fail to dedicate a significant portion of his/her agenda, time and resources to explore and exploit all available possibilities for media exposure.

There is no conclusive evidence that the candidate with the most media exposure (or who spends the most funds on his/her campaign) is the one most likely to win the election (individually elected positions) or to become elected (as a member of any assembly). However, there is a perception that there is a directly proportional relationship between both elements (which nearly any strategist would describe as being of the utmost importance) and that one more minute of advertising or presence in the media can make the difference. Thus most candidates will attempt to take this advice as far as possible. It is likely that the role of the media in the outcome of an election is seriously overestimated, and we must remember that empirical evidence tends to be sufficiently malleable to prove varying hypotheses.

However, it is true that access to and intensive use of the media has become an essential component in election campaigns, and as such a favoured topic of all manner of political debates, demands for regulation and legal reforms intended to provide minimum satisfaction of these demands. It is likely that the media, together with financing control, represent the central axes of most legal reforms and innovations implemented in the region during the past 10 or 15 years, and there is no other topic which is likely to overtake or eclipse them within the foreseeable future.





When reviewing the issue more carefully, the specific topics of regulation relating to access to and use of media outlets during election periods or for campaign purposes are very varied, and their meaning and scope can be analysed from several perspectives. In fact, the range of media outlets that we might include in this category can also vary.

For the purposes of this study, we will focus our attention on regulations relating to the use of conventional electronic media (radio and television), because despite the rise of modern media<sup>13</sup> (especially so-called social media, such as Twitter, Facebook etc.), it is traditional electronic media which continues to dominate the efforts and budgets of campaigns, and which are the easiest to regulate legally. Thus our approach will focus more specifically on regulations relating to guaranteed free access, prohibitions or restrictions on the purchasing or broadcasting of advertising during the election period, and other more specific regulations with respect to the permitted use of media outlets for electoral purposes.

### 1. GUARANTEED FREE ACCESS FOR PARTIES AND/OR CANDIDATES

Within a broader context in which access to mass media outlets has a strategic importance in earning the preference of voters and in recognizing that the disparity of resources or capabilities can significantly affect the possibilities of such access and (consequently) the results of the contest, guaranteed free access has become a basic tool aimed at achieving conditions of equity, ensuring that there is at least a minimum platform for all contenders.

As shown in Table 7, 15 of the countries examined have legal provisions that offer parties and, where appropriate, candidates guaranteed free access to radio and television for advertising purposes during election periods. The table also summarizes other information about this guarantee, including its effectiveness:

**TABLE 7**  
**TERMS OF GUARANTEED UNPAID ACCESS TO RADIO AND TELEVISION**

Country	Guaranteed free/effective access	Time of Implementation	Types of Media	Daily Time Available per Media Outlet	Criteria for Distribution
Argentina	Yes / Yes	23 of the 33 campaign days	All	10% of operation time	Mixed: 50% egalitarian and 50% proportional to vote received
Bolivia	Yes / Yes	30 of the 90 campaign days	State media	N.A.	Egalitarian
Brazil	Yes / Yes	60 days	All	Two hours, including one between 8 and 11 pm	Mixed: 33% egalitarian and 66% proportional to polls
Chile	Yes / Yes	30 days	TV only	30 to 40 minutes	Egalitarian for presidential elections and proportional to vote received for legislative elections



**TABLE 7**  
**(CONTINUED)**

Country	Guaranteed free/ effective access	Time of Implementation	Types of Media	Daily Time Available per Media Outlet	Criteria for Distribution
Colombia	Yes / Yes	60 days	All	As agreed by authorities	Egalitarian for presidential elections and proportional to vote received for legislative elections
Costa Rica	No	-	-	-	-
Dominican Republic	Yes / No	-	-	-	-
Ecuador	Yes / Yes	The entire campaign	All	N.A.	Egalitarian
El Salvador	Yes / Yes	Five days	State media	30 minutes	Mixed: 50% egalitarian and 50% proportional to polls in the Assembly
Guatemala	Yes / No	-	-	-	-
Honduras	No	-	-	-	-
Mexico	Yes / Yes	The entire campaign	All	41 minutes	Mixed: 30% egalitarian and 70% proportional to vote received
Nicaragua	Yes / No	-	-	-	-
Panama	Yes / Yes	The entire campaign	State media	One hour	Egalitarian
Paraguay	Yes / Yes	10 of the 60 campaign days	All	10% of operation time	Egalitarian
Peru	Yes / Yes	60 days	All	Between 10 and 30 minutes	Egalitarian
Uruguay	Yes / Yes	30 days	State media	Two minutes per party	Egalitarian
Venezuela	No	-	-	-	-

- Strictly speaking, this guarantee is only effective in 12 of the 15 countries, given that in the Dominican Republic, Guatemala and Nicaragua it is limited to state media outlets, which are either non-existent or their coverage and audience are so limited that the interested parties do not demand that this guarantee be respected.

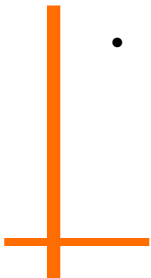
Venezuela deserves special mention because guaranteed free access is not established as a right of the contenders. However, the law does allow election authorities the discretion to determine whether to finance, in full or in part, the broadcasting of advertising in the press, radio or television, pursuant to the legal regulations they adopt in this regard.

El Salvador also fell within this category before a reform was passed in early 2013. While there was guaranteed free access to state media outlets, there were no rules or incentives to realize the guarantee. It would seem that with the new regulations, the situation could improve, which will need to be assessed during the elections scheduled for 2014.



Assuming such a change is made in El Salvador, there are 12 countries in which this guarantee is, or can be, effective:

- In six of them (Brazil, Colombia, El Salvador, Mexico, Panama and Peru), political parties are entitled to permanent access — i.e. this guarantee is not restricted to election periods.
- In three (Ecuador, Mexico and Panama), it is extended throughout the campaign period, while in the remaining countries it applies during a portion of the period, which ranges from a maximum of 60 days (Bolivia, Brazil, Colombia and Peru) to a minimum of five days prior to the end of campaigning (El Salvador).
- In seven countries these regulations normally apply to all radio and television media outlets, including, at minimum, free-to-air broadcasters, and also extending, depending on the modalities and terms of concession or ownership in each country, to restricted or paid broadcasting. In Chile it includes only open-air television broadcasters, while in Bolivia, El Salvador, Panama and Uruguay it applies strictly to state or public access broadcasters.
- The criterion applied to determine the daily time to be allocated by each media outlet to guarantee free use by parties and candidates varies significantly from one country to another; in some cases it is a predetermined net time (reaching two hours in Brazil), while in others it is a percentage of the broadcasting schedule of each media outlet (Argentina and Paraguay). In Colombia the amount of time must be agreed for each process by election authorities and by the authorities responsible for regulating media operations.
- The predominant approach used to distribute free timeslots among contenders (registered parties and candidates) is egalitarian — i.e. they are distributed equally — which is consistently applied in six countries (Bolivia, Ecuador, Panama, Paraguay, Peru and Uruguay), as well as for presidential candidates in Chile and Colombia, which use a simple proportional approach for other elected offices. In Argentina, Brazil, El Salvador and Mexico distribution is determined using a mechanism of adjusted proportionality in which a percentage is distributed equally and the remaining amount according to electoral strength, measured by the number of votes or seats obtained.
- Both the schedules and the ways in which free time can be assigned or used in the various media outlets vary significantly according to the preferences of the contenders and their financial/technical capabilities (production costs can be very high and are not normally covered by state subsidy), as well as the length of their corresponding timeslots and whether or not the slots are distributed throughout the broadcasting schedules or are concentrated in blocks or ranges.
- What is overwhelmingly predominant today in the use of paid and free time (and preferred by campaign strategists who specialize in marketing and who, despite what is claimed publicly, are fervently embraced by many parties and candidates) is the ads or short 'spots', using the style of commercial advertising for products and services.







Moreover, it is important to highlight the following:

- In Argentina, Brazil, Ecuador and Mexico the contenders' access to media outlets for the purposes of election advertising occurs directly only through the free times guaranteed by law and provided by the government, meaning that no additional radio or television time or space may be purchased for these purposes. In Chile a similar approach is used, but only for election advertising on television.
- In Mexico, to ensure effective delivery of guaranteed free access to radio and television as per the terms established by law, it is the election authorities' responsibility to administer the times corresponding to the government in these media outlets (48 minutes daily) throughout the time that election processes are underway (not only during pre-campaign and campaign periods). To perform this duty, the Federal Electoral Institute (IFE in Spanish) installed and now operates a complex and sophisticated technological platform through which the materials produced by the parties are received and broadcast, and the broadcasts are monitored throughout the country.
- In Argentina and Mexico guaranteed free access and the prohibition of additional paid time and space also applies to pre-campaign periods, the activities of which, as indicated in Chapter 2, are also subject to very specific regulations.
- In Colombia the law provides for 'maximum access' to radio and television for presidential campaigns, paid for by the government, which includes, in addition to the free spaces for advertising throughout the broadcasting schedules of the varying outlets, the time to hold three debates of up to one hour each and two interventions by each candidate, one lasting five minutes at the start of the campaign, and another lasting 10 at the end.
- In Uruguay presidential candidates are also guaranteed an additional unpaid five minutes at the start of the campaign and 15 minutes towards the end, to send a message to the electorate.

Finally, it should be noted that in April 2013 (just before this study was concluded) the Supreme Electoral Tribunal of Costa Rica, exercising its powers under the country's legal framework, presented to the Congress a legislative initiative to guarantee free access by political parties to radio and television during campaigning periods; if approved, this bill would increase the number of the countries with such provisions. The initiative grants 30 minutes daily (within a given timetable) in every media outlet, to be distributed between political forces using a mixed formula: 60 per cent egalitarian and 40 per cent proportional to their electoral strength.

## 2. RESTRICTIONS OR OBLIGATIONS RELATED TO THE PURCHASE AND BROADCAST OF ELECTION ADVERTISING

A great number of legal provisions have been implemented to address how the influence of media advertising is exercised and assessed for electoral



purposes. The goal is to respond to both the requirement of equity in the contest and the need and desirability of containing the spiralling increase in campaign expenditures. They also aim to make the procedures to purchase advertising more transparent, reliable or verifiable.

Table 8 identifies and summarizes some of the most common provisions. The following observations are based on the information from the table:

- **Limits on the period during which paid advertising may be broadcast**

There are four countries (Argentina, Brazil, Ecuador and Mexico) which have an absolute prohibition on the hiring of advertising on radio and television for electoral purposes, as parties and candidates can only broadcast direct advertising using the free spaces given to them by the government. In Chile there is a similar prohibition, but it only applies to television advertising, not radio. In Ecuador the prohibition on purchasing advertising extends also to the printed press, billboards and any other means of social communication.

Additionally, another five countries have limitations on the hiring of media advertising, implemented through a pre-established term during which ads may run. The term is shorter than that which is explicitly (Bolivia, Colombia and Paraguay) or implicitly (Peru and Uruguay) established for election campaigns, corresponding to the term during which the corresponding guarantees for free access to radio and television are effective, except in Paraguay.

- **Limits on the amount of time that may be hired daily in each media outlet**

There are seven countries in which the limitations established by law relate to the amount of time which may be hired and broadcast daily in the various media outlets, which in practice tends to limit and control expenditures in the area which incurs perhaps the highest costs of an election, while also preventing high levels of advertisement saturation among the audience.

Within this group there are four countries which, in addition to the daily limit, also have a temporal limit as mentioned in the previous section; therefore, in Bolivia, Colombia, Paraguay and Peru both types of limits are effective simultaneously.

It is important to note that in all cases (except Peru) the limits on time and space hired daily extend also to printed media. In fact, in Brazil, where there are prohibitions on the hiring of radio and television advertising, there are also restrictions on the daily purchase of space in printed media.



In this regard, the initiative proposed by the Costa Rican electoral authority, as discussed above, to guarantee free access to radio and television during electoral periods, also states that political forces may hire on their own only the same amount of time as the one granted to them.

- **Obligation of media outlets to record or report their prices**

It could be very helpful to require that media outlets report to or at least notify authorities of the current prices for the purchase of time and space for the broadcasting of election advertising and publicity, and, further still, to require that they submit periodic or final reports regarding the times or spaces hired. For example, authorities could have an auxiliary tool to confirm the veracity of the information reported by the contenders regarding adherence to other legal provisions (campaign expense reports, ceilings on campaign expenditures, limits on daily purchases). They could apply preferential rates to election advertising, guarantee the principles of equality and non-discrimination in purchasing transactions or simply insert a minimum level of security and legal certainty in this process.

Most of the countries using regulations of this kind, by virtue of the fact that the contenders can purchase advertising (the exceptions being Honduras and Uruguay), have provisions related to certain attributes of the prices offered by the media. However, it is important to note that only seven of the 11 countries have any obligation that the media report or at least notify authorities in a timely manner. If the authorities are formally unaware of prices, it would be very difficult for them to be able to ensure or verify that the principles set forth by law (however worthy) are effectively upheld.

In any case, Colombian regulation stands out in this issue, with radio and television concessionaires required to sell advertising at a rate 50 per cent lower than that used for commercial advertising during the six months prior to the election. Also in Colombia there must be a written record of any transaction made free of charge, which will be considered a donation to the respective party, and as such calculated as a contribution to the campaign expenses. Furthermore, in Bolivia, Costa Rica and Guatemala it is expressly established that only those media outlets which report their prices in due time and manner are legally authorized to sell and broadcast election advertising.





**TABLE 8**  
REGULATIONS ON THE PURCHASE AND BROADCASTING OF ADVERTISING

Country	Limits on the Period for Broadcasting of Paid Advertising	Limits on the Daily Time or Space which May be Purchased	Requirements Relating to Prices
Argentina	Prohibited	Not applicable	Not applicable
Bolivia	Only during the 60 days of the campaign	TV and radio: 10 minutes Printed media: two pages daily and a weekly supplement of 12 pages	Mandatory report and application; may not be greater than commercial prices
Brazil	Prohibited	Not applicable Printed media: one eighth of a page in newspapers and one quarter in magazines	Not applicable
Chile	Prohibited on TV	Not applicable to TV No limit for radio	Not applicable to TV Non-discrimination on the radio
Colombia	Only during the 60 days of the campaign	Decision of election authority	50% off commercial rates, and ads given free of charge are calculated as contributions and expenses
Costa Rica	-	-	Only media outlets reporting prices may sell and broadcast advertising; equal opportunities
Dominican Republic	-	-	May not be greater than commercial advertising
Ecuador	Prohibited	Not applicable	Not applicable
El Salvador	-	-	Obligations to report prices to authorities; non-discrimination
Guatemala	-	Decision of election authority in consultation with the parties	Only those media outlets which report prices may sell and broadcast advertising; prices may not be greater than the average price for commercial ads
Honduras	-		
Mexico	Prohibited	Not applicable	Not applicable
Nicaragua	-	TV: three minutes Radio: four and a half minutes Printed media: two pages	A proposal is submitted to authorities which establishes prices (which may not be greater than ordinary prices)



**TABLE 8**  
**(CONTINUED)**

Country	Limits on the Period for Broadcasting of Paid Advertising	Limits on the Daily Time or Space which May be Purchased	Requirements Relating to Prices
Panama	-		Principles of equality (of times or spaces purchased) and non-discrimination
Paraguay	Only during the 30 days of the campaign	TV and radio: five minutes Printed media: one half page	Obligation to report prices to authorities; may not be greater than commercial prices
Peru	Only during the 60 days of the campaign	TV and radio: five minutes	Obligation to report prices to authorities; equality of conditions; may not be greater than commercial prices
Uruguay	Only during the 30 days of the campaign	TV radio and printed media: defined for each electoral process	-
Venezuela		TV: two minutes Radio: four minutes Printed media: one half page	Subject to regulation by authorities

### 3. OTHER MODALITIES AND REGULATIONS RELATED TO ACCESS TO OR USE OF MEDIA OUTLETS DURING CAMPAIGN PERIODS OR FOR ELECTORAL PURPOSES

Most of the regulations reviewed up to now focus on what is probably the prototypical modality of proselytism and media-based advertising: the times or spaces accessed and controlled directly by the parties and/or candidates, regardless of whether they are paid or free. Whether presented as speeches or as pre-recorded promotional spots, lasting several minutes or just a few seconds, their content, and often their technical aspects, are defined and controlled fully by the contenders or their representatives. Their message reaches the audience with no filtering or mediation. However, this is not the only way media exposure is attained.

There is a wide range of media in which the contenders' access and the terms of the coverage of their activities or the handling of their messages are defined and mediated (or even magnified, distorted or ignored) by reporters, hosts, editorialists or analysts from these media outlets, and these are not strictly limited to newscasts or opinion programming. Nowadays, their presence (though rarely their proposals or platforms) assiduously seeks projection in simple entertainment or variety programming, in which many candidates have had no qualms in lending themselves as 'stars' of the show, by performing some presumed 'artistic' talent or participating in a comedy sketch, all for the sake of earning a few popularity points.




Many of these phenomena would seem irrepressible. This is due to the dilemmas and complexities imposed by the fact that countering principles, interests and values are at play, making regulation controversial. It is also because they are based on a model of campaigning which, well moulded to the realities of our times, preaches that for a campaign to be successful, the candidate must be popular, and for that to happen, there is nothing better than systematic media exposure.

In any case, in this final section we will very briefly discuss some of the regulations that, to some extent, have attempted to tackle these challenges and the demands resulting from the other ways to access and use media outlets. These other regulations are scarce and do not come near to achieving the extent of the preceding regulations. This is perhaps because their adoption responds to very localized phenomena. It may also be because they attempt to address dynamics and practices which, given their complexity or the interests at play, generate bitter debate, thus complicating the task of attracting support or achieving sufficient agreement to regulate them legally.

- **General guidelines applicable to radio and television newscasters for reporting on and coverage of campaign activities**

It can be relatively simple to generate a broad consensus around the idea that, within the framework of a genuinely democratic election, it is desirable that the media offer plural and equitable coverage and truthful, impartial and appropriate handling of information relating to election campaigns. However, once the debate begins as to how to promote or guarantee the prevalence of or adherence to these attributes, this consensus often fades, resulting in significant disagreements and controversy, with the rights to freedom of expression and information in the background at all times. Some advocate the principle of self-regulation by the media, while others support the voluntary subscription of codes, and still others are for a certain type of binding legal regulation. This is indeed an open debate, as there is no single response or solution.

In Mexico since 1993 the law has empowered the federal election authority (the Federal Electoral Institute) to formulate, in consultation with the political parties, general guidelines for the coverage and handling by radio and television newscasts of information relating to campaign activities, which are presented as mere suggestions (and are not binding) to the organizations which make up the radio and television concession- and permit-holders.



While certain adjustments have been made over time, these guidelines support the principles or criteria of equal opportunities, equity, impartiality, uniform quality, differentiation between informational news and spaces of opinion or analysis, the right of reply, respectful criticism, respect for the private lives of contenders and the promotion of dialogue and debate.



In this same regard, but with the weight of a legal mandate, Venezuelan law includes provisions which require that public and private media outlets provide complete and balanced coverage of information relating to the election campaign, to which end they must achieve “a rigorous equilibrium regarding the time and space dedicated to the information related to the activities performed by the candidates”.

- **Monitoring of media outlets’ coverage of election campaigns**

The Mexican federal election authority is also a pioneer in the region in the area of monitoring the coverage of campaigns in news and informational spaces on radio and television. To verify to what extent the suggested general guidelines for campaign coverage were being met, in 1994 it ordered, with no express mandate on the matter at that time, that the main radio and television newscasters be monitored, with the results released to the public.

This exercise was so productive and so well received that two years later, as part of an ambitious package of reforms, a provision was included in the law which expressly empowered the authority to monitor campaigns (now also pre-campaigns) for each federal election process, based on which fortnightly reports are drafted and released to the public. This monitoring system is different from that used to ensure respect for the guidelines for distribution and due transmission of the materials produced by the parties to exercise their right to free access to radio and television.

In Bolivia the law states that, to assure compliance with the applicable legal regulations on free and paid times and spaces as well as on their contents, the electoral authority must monitor public and private media outlets daily.

In Panama the law also establishes that the election authority monitors media outlets to determine the level of coverage given to the contenders, but only for presidential campaigns. Guatemalan law, however, empowers the Supreme Electoral Tribunal to monitor the election advertising broadcast in social media during the election process through its internal General Inspection Unit or by hiring a private company.

Without a doubt, monitoring can be an essential tool for authorities, not only to ensure effective compliance with the provisions relating to access to and use of radio and television during election periods but also to check and verify any reports which the contenders or the media outlets themselves are required to deliver.





- **Participation of candidates in journalistic programming**

Now that the idea of the media representing a strategic focus in the outcome of elections has been broadly accepted, and the resulting notion that a systematic media presence or exposure can be decisive for the expected success of a campaign, it is natural that regulations be sought to prevent certain persons who have been put forward or registered as candidates for public office and who have some relation to the media from gaining any advantage in their ability to capture greater media exposure.

Our incursion into this topic suggests a vast area for reflection and analysis, especially in an era in which the masses have profoundly changed their ideals and aspirations and in which the power of the media has not only reached new levels but is also manifested in multiple forms. However, we only have the space to describe the legal provisions that clearly see this ability or possibility to wield greater influence or media presence as representing an unfair advantage in the contest for votes.

Along these lines, Bolivian law provides that no candidate may, either personally or indirectly, and from the time he/she is registered as a candidate, "contract, rent, utilize, produce, direct or perform journalistic programmes in the media". In Brazil the media is prohibited from broadcasting programmes "hosted or presented by a registered candidate" from 1 August of the election year, corresponding to a little more than two months prior to the election.

In a different approach, but with the same aim related to the potential eagerness on the part of candidates for media exposure, Colombian law prohibits television concessionaires from presenting the candidates during the campaign season in spaces other than those dedicated to news or opinion programmes.

#### 4. PROHIBITIONS OR RESTRICTIONS RELATING TO THE CONTENTS OF ELECTION ADVERTISING AND PUBLICITY

Initially, given the ethical and moral imperatives aimed primarily at protecting certain fundamental human rights and fostering a democratic culture and values, but increasingly also at countering the trend towards the use of negative campaigning (discrediting adversaries), provisions have been expanded and strengthened in terms of prohibitions or restrictions on the content of election advertising and publicity, as well as requirements for the dissemination or publication of the same in mass media, when materials are designed or produced expressly for such purpose.

The broadest possible meaning of the concepts of election advertising and publicity are used here. This covers the different laws applicable to the types





of activities performed within the framework of a campaign or for electoral purposes. It also encompasses laws with a greater temporal scope which are applied to advertising conducted by political forces at all times, not only during election periods, as well as the different formats used to express the contents which are subject to prohibitions or restrictions (oral, material, graphic or audiovisual expressions, for example).

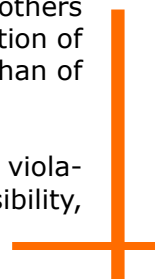
Appendix 3 offers an overview of the types of express prohibitions or restrictions imposed by the laws of the countries being reviewed, though it is not intended to be exhaustive. In 14 out of the 18 countries (all but Argentina, Chile, Panama and Uruguay) there are express prohibitions on the issue of election advertising or publicity, though the range of prohibitions used varies substantially from one country to another.

A broad set of common elements prevails in the terms and spirit of the varying prohibitions, especially those which are against discrimination, the denigration of institutions or candidates, honour and dignity, adherence to the law, and the use of religious symbols. However, there are some prohibitions which seem to respond to highly case-specific factors (such as prohibiting the provoking of animosity between or against the armed forces and/or civil institutions, as in Brazil, or prohibiting the creation of combat groups or brigades, armed or otherwise, as in Paraguay) or to positions consistent with the development of certain rights (the use of children or adolescents). There are, however, others which demonstrate clear positions referring to contextual differences. Examples include Colombian law, which recognizes and guarantees the right to promote abstention, while this is expressly prohibited in Bolivia, Honduras, Nicaragua and Venezuela, representing an issue that could easily become a source of controversy in many other jurisdictions.

It is outside the scope of this study to make any attempt at fully examining this complex (and very specific) doctrinal or conceptual problem, especially when viewed in the context of the regulations' potential conflict with other rights, such as the freedom to express ideas or to access information.<sup>14</sup> Nevertheless, we will offer certain basic observations regarding some of the implications and practical challenges involved.

First, clearly discerning the meaning and scope of these regulations can be extremely complex in light of other fundamental rights enshrined by law. Of course, the scopes and limits of a single concept may vary from one jurisdiction to another, and even within a single jurisdiction from one specific case to another. Moreover, some concepts are more complex and elusive than others — for example, it may be much easier to allege and document a violation of the prohibition on the use of images of children or patriotic symbols than of libellous or slanderous expressions.

Second, this is a matter of regulations (prohibitions) and (presumed) violations that, by definition alone, can only occur in conditions of public visibility,





thus taking place in a media environment. This separates these regulations/violations from many others for which there is rarely any public or documentary evidence, the investigation and documentation of which requires that the complainant submit, or the competent authorities uncover, evidence outside direct public (and media) scrutiny.

The combination of these two elements means that for these kinds of regulations to be at least minimally effective, there must be a required solution of continuity in establishing or adopting some process for submitting and resolving complaints regarding presumed violations.

In fact, the effective adherence to this imperative or demand results, to begin with, in at least two other very important implications that can be very closely linked in public (or published) perception and opinion. First, the resolution of any formal complaint or dispute related to the violation of these regulations requires the power and ability to impart justice. This, of course, is not a problem when this is the duty of specialized litigation bodies, since this is their *raison d'être*. But the situation changes when the responsibility for exercising judicatory functions lies with a non-specialized authority which is at the same time responsible for the management of the election process, whose integration, operation and decision-making process can be affected by partisan interests, including, of course, those which are party to the dispute.

Second, a problem may arise when the mechanism for complaint or dispute becomes in itself a campaigning instrument. In these cases, for the complainant, a legal resolution to the complaint matters much less than the victory in public opinion, since their campaign is seen to have suffered from negative campaigning or, better still, one of their opponents in particular is seen as having used illegal practices against them as a systematic campaigning tool.

The topic of regulation of the content of advertising and publicity has many angles, all of which provoke dissent and controversy. Needless to say, for guilt to be determined in cases of alleged violations of these kinds of regulations, it is assumed that the content of the advertising is the responsibility of the contenders. In this regard, it bears mentioning that to prevent the problem of alleged violations of prohibitions on content from being compounded by the difficulty in identifying the responsible person, thereby adding another layer of complexity in the handling of these prickly issues, the laws of some countries prohibit the broadcasting or publication of anonymous advertising or publicity.

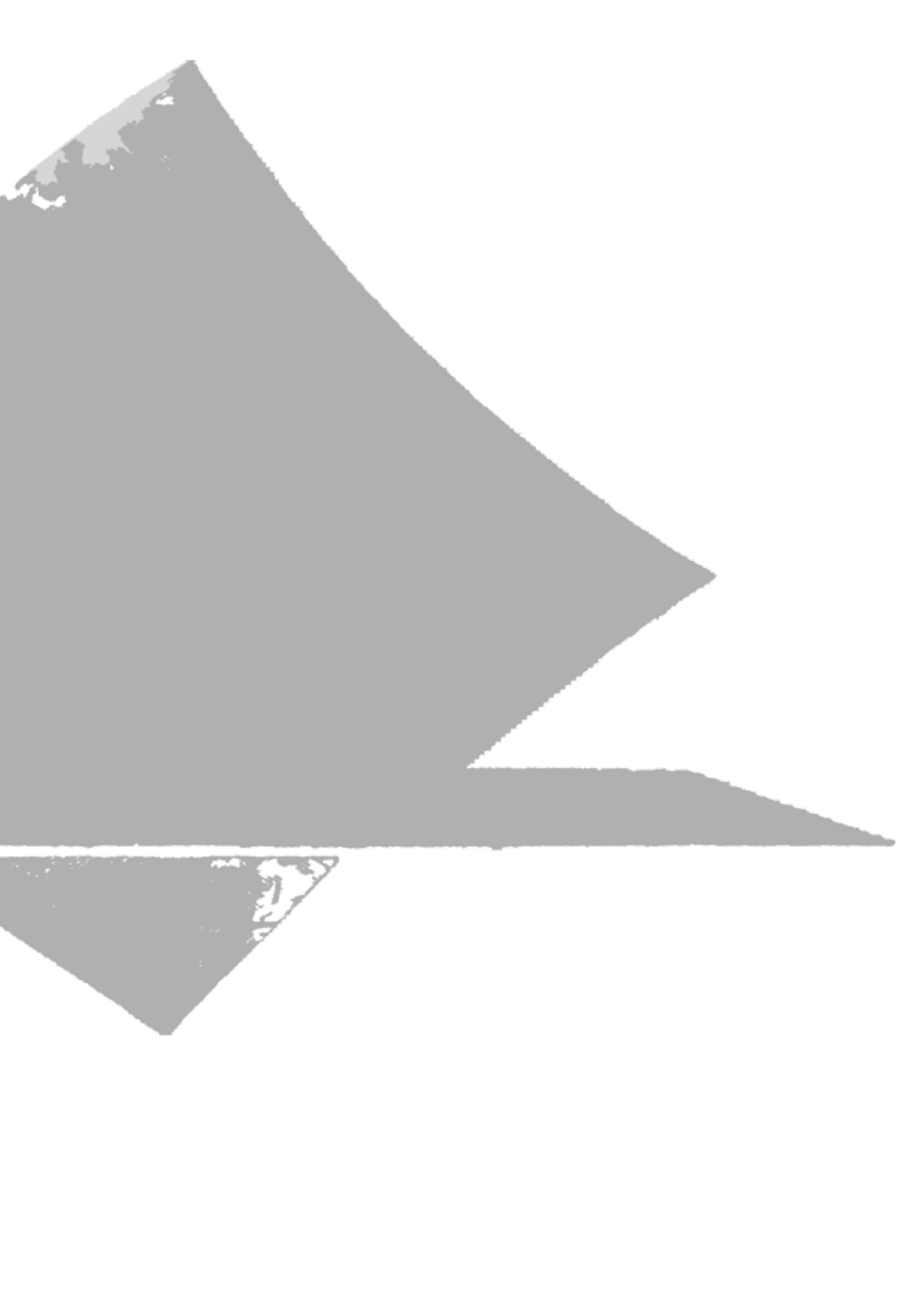
There are express provisions in the laws of Bolivia, the Dominican Republic, Guatemala, Honduras, Nicaragua and Venezuela aimed at preventing anonymity from circumventing regulation or, where appropriate, the applicable penalties. To this list we must add, at least for the dissemination of advertising and publicity via radio and television during election periods, Argentina,



Brazil, Ecuador and Mexico, where the purchase of times and spaces for these purposes is not permitted.

In Bolivia these precepts are further strengthened to control the source of the advertising, in establishing that all pieces must be clearly identified with the name and symbol of the responsible organization, and, for paid advertising, they must be accompanied by a notice indicating that the space has been 'paid for'. The laws of Honduras and Panama, in turn, include express provisions aimed at holding media outlets liable for the dissemination of anonymous advertising.







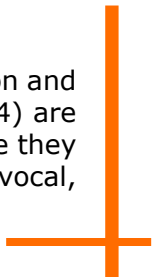
## VI. NON-INTERVENTION OF GOVERNMENT BODIES

Most of the countries in the region have, to some extent, had experience (including very recently) with public powers and governance far removed from (or flatly opposed to) the most fundamental democratic ideals. Therefore it is understandable and even logical that provisions be adopted which seek to prevent government bodies from intervening or improperly influencing the electoral contest, whether by favouring the candidates that represent their interests or by harming their opponents.

The range of regulations aimed at preventing access, mobilization or use of public resources by persons authorized to do so from being manipulated to influence the electoral contest becomes so broad and diverse, as shown in the cumulative evidence, or supposed by natural suspicion.<sup>15</sup> For the purposes of this study, we attempted to identify most regulations of this kind appearing expressly in the electoral laws of the countries reviewed, grouping them into four overarching categories:

- regulations relating to the use of public resources or funds;
- regulations relating to official or governmental publicity during the election campaign;
- regulations relating to the exercise of the functions or activities of public servants; and
- regulations relating to the realization of acts of government or the inauguration of public works

Given the nature of these provisions, it is likely that these identification and systematization efforts (reflected in Table 9 and detailed in Appendix 4) are neither exhaustive nor unequivocal. They may not be exhaustive, since they may not include all existing regulations, and they may not be unequivocal,





since, given their phrasing or practical implications, some of these regulations may correspond to more than one of the categories used or could be included in another of the pre-established categories (for example, a prohibition on conducting programmes or acts of government may also imply the inauguration of public works).

As shown in Table 9, only Paraguay has no express restriction of this kind, while in Brazil, Colombia and Honduras all such restrictions are included in some form or variation (described in somewhat greater detail in Appendix 4). Based on their frequency, the most common restrictions relate to the dissemination of advertising in the media (15 cases), and to the activities of public servants (13 cases), while the least common restrictions relate to acts of government (four countries). To offer an idea of the variations that can occur between the regulations grouped into each of the four categories, some more specific information is briefly provided below.

**TABLE 9**  
REGULATIONS AIMING TO PREVENT INTERVENTION  
AND THE USE OF PUBLIC RESOURCES

Country	Use of Public Funds and Resources	Official Advertising	Activities of Public Servants	Government Works
Argentina		x		x
Bolivia	x	x	x	
Brazil	x	x	x	x
Chile		x	x	
Colombia	x	x	x	x
Costa Rica		x	x	
Dominican Republic	x			
Ecuador	x	x		
El Salvador	x	x	x	
Guatemala		x	x	
Honduras	x	x	x	x
Mexico	x	x	x	
Nicaragua		x	x	
Panama	x	x	x	
Paraguay				
Peru		x		
Uruguay			x	
Venezuela	x	x	x	

### 1. REGULATIONS RELATED TO THE USE OF PUBLIC RESOURCES OR FUNDS

The concept of resources and funds is understood in the broadest sense possible, so as to include the variations or particularities of the varying legislations, although it excludes those regulations expressly referred to in the



other three specific sections analysed. And, indeed, though we have only identified the existence of these regulations in 10 countries, their meaning and scope are quite varied.

In Brazil it is prohibited to distribute free goods, valuables or benefits free of charge, except in cases of disaster or emergency during election years. In Mexico, however, what is prohibited is the use of social programmes to encourage or coerce citizens to vote for or against any party or candidate. In other countries regulations are very general, such as in Honduras — where it is simply prohibited to use government resources to make partisan advertising from public institutions — or very specific, such as in El Salvador — where regulations refer to the use of official vehicles for partisan activities.

One significant aspect relates to express provisions on the authorization or realization of various financial transactions that may have some electoral implication or effect. In Brazil, for example, it is prohibited to make any transfer of funds from the federal government to the states or municipalities during the three months prior to the elections. In Colombia the authorities from public institutions are banned from celebrating, during the four months prior to the elections, inter-administrative agreements for implementing public resources or which allocate resources from the entities under their charge, or where they participate as members of the governing boards for meetings of a proselytizing nature.

Bolivia, in turn, expressly prohibits ordering or taking discounts from the salaries or wages of public officials allocated to the financing of election advertising. In a similar approach, Ecuador prohibits imposing or demanding contributions in state institutions in favour of political organizations or candidates.

## 2. REGULATIONS RELATED TO OFFICIAL ADVERTISING OR PUBLICITY

These regulations are the most common, being present in 15 countries, and are very diverse in terms of their meaning and scope. First, in terms of those which are measured quantitatively, at the one end there are the regulations of Costa Rica, Ecuador, Mexico and Peru which prohibit the dissemination of government advertising throughout the campaign period (and, if applicable, the silence periods prior to election day), with some clearly defined and very justifiable exceptions. On the other end there is Panama, where, to avoid the 'over-saturation' of advertising during the election period, public institutions are merely required not to present any more advertisements per day and month than the average presented during the six months before the process, while in Chile it is prohibited to incur advertisement and publicity expenses beyond those necessary to complete their functions.

In the other countries with regulations on this issue the prohibitions do not relate to the suspension or volume of official advertising but, rather, to their



contents and orientation. In Argentina, for example, publicity regarding acts of government are prohibited from containing elements which expressly encourage voting for any candidate, while in Nicaragua it is prohibited to use the property of the State for political advertising.

### **3. REGULATIONS RELATING TO THE POLITICAL/ELECTORAL ACTIVITIES IN WHICH PUBLIC SERVANTS MAY PARTICIPATE**

This category includes regulations relating more to prohibitions on the political/electoral activities in which the persons who form part of the government at its many levels may intervene and participate directly. They do not necessarily refer exclusively to the potential use or misuse of public resources or funds available to them for electoral purposes but, more precisely, to demonstrations in their public behaviour, inside or outside their workplace, of political partiality, which at all times would counter their obligation to remain neutral in the performance of their public duty.

The number of countries with these regulations is significant (13), while the regulations themselves are diverse in their nature and scope, although a common thread is found relating in most cases to prohibitions on any active involvement in proselytizing or partisan propaganda activities. The concept of public servants, employees or officials tends to have a general meaning which covers people from all hierarchical levels and sectors of the central or decentralized government, though in some cases, such as in Costa Rica and Uruguay, there is a precise list of those persons to whom the established prohibitions apply.

Both cases also illustrate the scope these prohibitions can have. In Uruguay, after specifying that these persons may not be part of political committees or clubs or sign partisan manifestos, the law goes further by banning any public or private act of a political nature, except casting their vote. Costa Rica prohibits these persons from performing works or discussions of a political/electoral nature during working hours (in the laws of Chile, Guatemala, Honduras and Panama there is also special prohibition of performing political activities during working hours), and also bans the display of partisan symbols of any kind or placing them on their homes or vehicles.

### **4. REGULATIONS RELATING TO ACTS OF GOVERNMENT OR THE INAUGURATION OF PUBLIC WORKS**

Regulations from four countries explicitly include a prohibition or restriction on acts of government or the inauguration of public works. In Argentina they apply only during the 15 days prior to elections (including primary elections) and include, in general, any act of government that may aid in winning votes, including the launch or promotion of collective plans or projects. In Brazil what is prohibited is not the celebration of inaugural acts of government in and of itself but, rather, the hiring of artistic performances or the presence of candidates in such celebrations during the three months prior to elections.

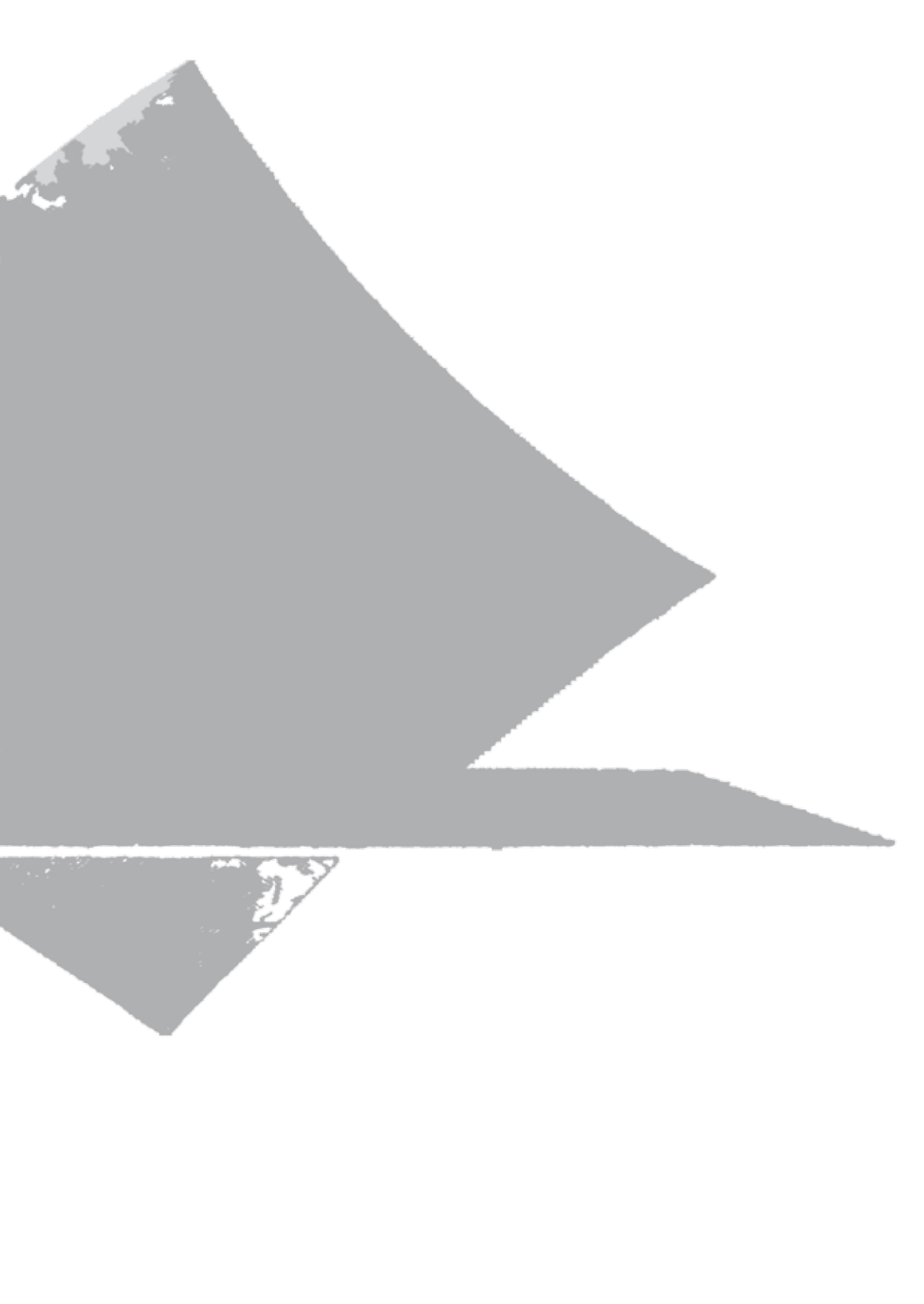




In Colombia, during the four months prior to elections, authorities and government officials at all levels are prohibited not only from inaugurating public works but also from initiating any social programmes during meetings in which candidates for public office participate. In a more general approach, Honduras prohibits the use of acts of government to conduct partisan propaganda.

The case of Bolivia is quite peculiar: what is expressly forbidden by the law is electoral publicity that uses images of inaugural acts of public works, services or programmes, while it is not explicitly prohibited for such activities to take place during the campaigning period, although there is the possibility for the law to be interpreted and applied in this sense.





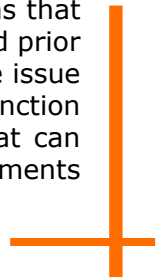


## VII. SURVEYS AND POLLS ON ELECTORAL PREFERENCES

From every imaginable angle, the knowledge, study or surveying of the opinions, preferences or behaviours of a social class through the use of polls or surveys of a segment of its members finds a natural and very fertile environment in the political/electoral arena. The contenders (parties and candidates, including their managers, representatives, supporters and even their opponents and detractors), the media, the electorate and at times even domestic and international public opinion may all be interested at some point in determining the prevailing moods and trends. This natural curiosity for determining public preferences and projections and, of course, the desire to make use of this knowledge, can increase significantly in situations of strong competition, which are increasingly common in the region.

To provide a backdrop for the controversies surrounding the issue of surveys and their regulation for electoral purposes, it is worth establishing certain very basic boundaries and details<sup>16</sup>. First, the instruments used to measure opinion regarding electoral preference can be differentiated using a two-fold approach: their timing, on the one hand, and their subsequent technical and methodological support, on the other. With regard to their timing, we can distinguish between those conducted prior to election day (opinion surveys and polls), those applied during election day ('exit polls'), and those conducted after reports are received from polling stations and on the basis of preliminary results (quick counts).

As this study relates to the issue of campaigns and to the regulations that precede the holding of elections, we will focus on the instruments used prior to voting. In this regard, and to illustrate a fundamental aspect of the issue which is often subject to much debate, we will make an important distinction in terms of the rigour and reliability of the different instruments that can be used to determine pre-election preferences. First, there are instruments





based on specialized knowledge and techniques, which we will refer to as 'surveys' to facilitate our discussion, while the others, which lack these attributes to some extent, will be referred to as 'polls'.

On this basis, a typical survey is one which meets a series of scientific standards or requirements (sample size and selection, battery of questions carefully designed to avoid bias in the responses) and would preferably be conducted using household interviews so as to best ensure and preserve representativeness and reliability. A simple poll, on the other hand, is something more similar to the type of 'poll' conducted on an internal portal or webpage among its users, a radio or television programme among its audience or a newscaster among passersby, which generally lack any scientific or methodological rigour.

This simplification will help us to introduce other relevant issues to our assessment of the topic. Public opinion research (conducting opinion studies) is a profession. There are companies that specialize in the design, implementation and analysis of these studies, whose activities are governed by a set of criteria and internationally renowned and accepted guidelines. There is even a World Association for Public Opinion Research (with a Latin American chapter).<sup>17</sup> The services of these specialized companies tend to be hired by two different types of users or stakeholders.

First, there are the contenders in an election, who use opinion polls (as well as other tools also offered by these specialized companies, such as focus groups) to define, adjust or fine-tune their campaign strategies and messages. The results of these surveys tend essentially to be for internal consumption, not for public dissemination, though it is important to note that, in the middle of an intense and close contest, the temptation to tamper with (or 'filter') some of the results can be irresistible. However, the rule tends to be very clear: if the surveys are not made for the purposes of publicity or public dissemination, they do not need to be subject to regulations or restrictions.

The other type of users includes a wide range of institutions and groups, including especially media outlets (which essentially use them for informational purposes or for the formation of public opinion), as well as other groups or corporations with a direct stake in the development and outcome of the election. The debate over the role of polls and the need for or appropriateness of their regulation tends to centre on this group.

Regarding the terms of this debate, there is an additional consideration that ought to be made. On the one hand, there are the voices which, based on the premise that the results of surveys have or can have a decisive influence on the preferences and behaviour of the voters, especially the 'undecided' voters, advocate for maximum regulation. On the other, there are voices which claim the principles of freedom of speech and access to information, also pointing out that the influence of surveys within the framework of a very



competitive market (surveys compete not only with one another but also with the positions or predictions of the candidates themselves and opinion leadership) is very marginal. Based on this, they oppose the regulation of surveys.<sup>18</sup>

The matter gets complicated when we include elements relating to what we have called opinion polls and the ability to manipulate their results (i.e. instruments not designed or applied by specialized companies or that fail to meet the minimum technical standards). This opens the door for the 'fabrication' of polls and results to the client's liking or for the 'filtering' and selective use of the results.

Given this context, we can more adequately project and discern the requirements as well as the nature and scope of regulations relating to the publications or dissemination of pre-election surveys that have been adopted in the region. As shown in Table 10, there are regulations on this specific matter in 14 of the 18 countries reviewed (the exceptions being Chile, the Dominican Republic, Nicaragua and Uruguay). There are three main categories: limits for publication or dissemination during a certain period prior to election day or the pre-election silence; registration requirements for companies interested in providing opinion research services; and requirements for the publication or dissemination of surveys.

**TABLE 10**  
**REGULATIONS FOR THE TRANSMISSION OR DISSEMINATION OF PRE-ELECTION SURVEYS**

Country	Election Silence (prior to the election)	Registration of Polling Firms	Requirements for Dissemination or Publication
Argentina	8 days	Yes	Information on the source of the survey and technical sheet
Bolivia	1 week	Yes, up until 30 days after the call for elections	Subject to regulation (pending issuance)
Brazil		No	Information on the source and technical sheet prior to publication
Colombia	8 days	Yes	Information on the source and technical sheet on publication (total survey)
Costa Rica	3 days	Yes, up until 15 days after the call for elections	No
Ecuador	10 days	Yes	Technical sheet no more than five days after publication and information on source no more than 15 days after the election
El Salvador	15 days	No	No
Guatemala	36 hours	No	No



**TABLE 10**  
**(CONTINUED)**

Country	Election Silence (prior to the election)	Registration of Polling Firms	Requirements for Dissemination or Publication
Honduras	30 days	Yes	Prior authorization of methodology
Mexico	3 days	No	Information on the source and technical sheet no more than five days after publication
Panama	10 days	Yes	Technical sheet on publication
Paraguay	10 days	No	No
Peru	7 days	Yes	Information on the technical sheet and methodology no more than three days after publication
Venezuela	7 days	Yes	Information on the technical sheet and methodology prior to and on publication

## 1. ELECTORAL SILENCE

In 13 of the 14 countries that regulate pre-election surveys (all but Brazil) restrictions are imposed for transmission or dissemination during a period prior to election day. The period of silence ranges from a maximum of 30 days in Honduras to a minimum of 36 hours in Guatemala.

In this regard, there are only three countries (Costa Rica, Guatemala and Mexico) where electoral silence is identical to that which is established for the conclusion of campaign activities. In the other 10 countries electoral silence is significantly longer than the one imposed for the conclusion of campaigns. In Peru, for example, while campaigns must conclude one day prior to election day, the period of silence for surveys lasts seven days, while in both Panama and Paraguay campaigns must end two days prior to the elections, and dissemination of surveys must end 10 days prior to the elections.

In addition to their timing, which in many cases is seen as excessive, one of the main objections to these restrictions relates to the fact that, at times, the flow of information on polls and surveys generated or circulated by various means (those taken outside the domestic territory or via social networks, for example) escapes the supervision and control of authorities during the electoral silence. This phenomenon may also threaten the principle of equal opportunities in access to information.

Likewise, in three countries (El Salvador, Guatemala and Paraguay) pre-election silence is practically the only regulation applicable to the publication of surveys and opinion polls.

## 2. REGISTRATION OF POLLING FIRMS

In nine countries the imposing of a silent period is additional to the registration requirements that companies or institutions interested in providing opinion research services for election purposes must complete for election authorities to be able to be hired for any polls which are to be published or disseminated publically.

In Bolivia and Costa Rica a deadline is established for polling firms to complete their registration, and authorities are even required to publish a list of the registered companies authorized to provide their services. In Venezuela registration is permanent, but opinion research providers (whether individuals or legal entities) must update their information at the start of each election process, and the authorities must also publish the list of registered providers. In the other six countries (Argentina, Colombia, Ecuador, Honduras, Panama and Peru), while there is no deadline established for registration, it is clear that this must be completed prior to the publication or dissemination of any results. In Peru this registration must be renewed every three years.

## 3. REQUIREMENTS TO PUBLISH OR DISSEMINATE SURVEYS AND THEIR RESULTS

The registration of polling firms in the nine countries included in the previous section is a requirement for them to be able to provide their opinion research services and disseminate their results. In eight of them there are additional specific requirements which must be met for surveys and results to be published. Costa Rica is the only country where there are no additional requirements. In addition, in two other countries (Brazil and Mexico) where there is no requirement for polling firms to be registered, there are requirements that must be met to publish polls and their results.

In general, the requirements imposed in these 10 countries relate to the provision of information, usually by the hired company, regarding the source of the survey (who commissioned it and the cost) and/or what is known as the technical sheet or methodological report (type of survey, usually distinguishing between home visit, telephone or internet-based surveys; the size and characteristics of the sample, as well as the selection process for the sample; the complete set of questions asked; statistical margin of error of the results; non-response rate; and other technical data).

In Argentina, Brazil, Colombia, Ecuador, Mexico, Peru and Venezuela both types of requirements are expressly established (information on the source of the survey and the technical sheet or methodological report, provided for each investigation or poll individually), although there are some differences between these countries. In Argentina this must be reported in writing to authorities, but the law does not specify when. In Brazil the information must



be provided to authorities at least five days prior to publication. In Colombia this must be reported on publication, and the survey must be included in its entirety. In Ecuador the regulations issued in November 2012 specify that the technical sheet for each survey must be submitted to authorities within five days of publication, while the data on their source must be submitted in a consolidated report no more than 15 days after the elections.

In Mexico the law requires: first, that individuals or legal entities that seek to conduct surveys adopt the general scientific criteria established for this purpose by election authorities after consulting with professionals or professional organizations in this area; and second, that any person that has ordered or requested that a survey be disseminated by any means must deliver a complete study of the survey within five days of publication. This complete report must include precise details as to the source of the survey, as well as its technical aspects. This includes documentation verifying the specialization and academic experience of the person conducting the survey, his/her knowledge of the area of public opinion research and his/her membership (or that of its members if it is a legal entity) in national or international associations in the area of public opinion.

In Venezuela the technical sheet and methodology of each survey must be specifically included in the database maintained by authorities, and then published together with the results of the survey.

Both in Argentina and Brazil authorities have the duty to publish this information on their web portals, while in Mexico the authority must submit periodic reports on the surveys conducted and create a micro-site showing the characteristics and details of each survey.

In Bolivia the law prohibits surveys that fail to meet the technical and methodological criteria established in the regulations issued by the authority (as of the completion of this study, these regulations had not yet been issued), as well as anonymous polls and those which are ordered or financed by political organizations, candidates, national or international electoral monitoring missions and international bodies. In Honduras, once the polling firms are registered, they have a period of five business days to report to the election authority on the methods and procedures to be used to conduct surveys, for authorization by the authorities. In Panama the publication of any poll must be accompanied by its corresponding technical sheet.

#### 4. EXIT POLLS AND QUICK COUNTS

Although these instruments clearly take place outside the pre-election stage of campaigns (which is the focus of this study), we believe it appropriate to include at least a brief mention of the regulations or restrictions imposed on opinion research relating specifically to exit polls and quick counts.





Following the order established for pre-election instruments, only 11 countries have express restrictions on their timing. This includes just 10 of the 13 countries that impose a pre-election polling silence (there are no such provisions in Argentina, Ecuador and Honduras). Although Uruguay is included in this list, it has no regulations on this issue other than to prohibit the dissemination of polling results on election day.

Of the 11 countries that impose restrictions, four of them (Colombia, Costa Rica, El Salvador and Guatemala) go so far as to prohibit dissemination on election day. El Salvador even prohibits dissemination until the results are declared to be final, which has not kept media outlets from making 'projections' based on preliminary vote counts. In the other cases the silence is lifted as soon as voting ends (in Uruguay and Mexico, with particular consideration for the different time zones in the latter) or a certain number of hours thereafter: Paraguay after only one hour; Panama after 19 hours; Bolivia after 20 hours; Peru after 22 hours or when the authorities issue their first official bulletin, whichever occurs first; and Venezuela, once the authorities distribute their first results bulletin.

Furthermore, it is clear that the requirement for the registration of polling firms is fully applicable for their results to be published where appropriate and within the terms or temporal restrictions established by law. Mexico, however, is an exception: although the law does not require any registration to disclose pre-election surveys, at least for the most recent federal election in 2012, there was an equivalent procedure used, but only for disclosure of the results of exit polls and quick counts. In effect, in a resolution adopted by the election authority, it was established that any person or legal entity that sought to conduct or publish any exit poll or quick count had to notify the electoral authority prior to a deadline before election day.

The same resolution also established that, again in the specific case of these two instruments, the interviewers had to wear a visible identity badge specifying the company they worked for, and that in disclosing their results they had to clearly indicate that the official results would only be those reported by electoral authorities. In this regard, Mexico is also the only country that has imposed additional requirements for the publication or dissemination of the results of these polling instruments.





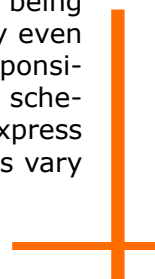


### VIII. DEBATES

The debates held between candidates are seen as a contribution to allow voters to cast an informed vote, since they allow them to understand and compare in detail the programmes and proposals put forward in the candidates' campaigns, as well as their ideas and positions on topics of public interest. Needless to say, collective national public opinion, and even international opinion in certain cases, as well as specific groups interested in the matter, can all benefit from and closely follow these encounters and exchanges that are today a media event. To achieve their objectives (those formally acknowledged and many others that may exist), debates require promotion and broadcasting by various media outlets (television, radio, printed media, and increasingly, the internet and social media). Normally these are the same media outlets that organize, sponsor and conduct the debates.

In any case, this practice is not unknown in several countries in the region. On the contrary, as has been documented in some specialized studies,<sup>19</sup> there are countries where the debates between candidates, whether presidential or for other elected offices, somewhat regularly and at least episodically, are an essential part of election campaigns.

What seems novel in the region is that in some countries' laws (still very few, but this is how trends are set) certain guidelines or directives are being established for the organization of these debates. In some cases they even grant election authorities certain powers to intervene in or assume responsibility for arranging and preparing debates with regards to political and scheduling issues and even technical matters. In this regard, there are express legal provisions in four countries, though once again these regulations vary significantly.





## **Brazil**

The debates held between candidates are regulated exclusively as part of the free election slots granted to political parties for radio and television publicity during the 60-day election campaign period. It is notable that the legal precept is extended to candidates for various elected offices, to which end there are even distinctions made between the specific precepts and regulations applicable to the debates between candidates for majority posts (such as that of president or governor) and candidates for proportional posts (legislative assemblies at their varying levels).

The responsibility for organizing the debates lies with the legal entities interested in their verification, while the responsibility for transmitting them lies with radio and television broadcasters, which may very well be (and generally are) the main parties interested in organizing and promoting the debates. The candidates are responsible for deciding whether or not to attend the debates that have been organized, but in any case the debates' sponsors are required to formally invite them all, or at least those from the parties with parliamentary representation at a federal level, with a minimum of 72 hours' notice. Formally, electoral authorities do not intervene in any way in the organization of the debates, but they must be informed by the sponsors in due time.

As in other countries in the region without legal regulations on this issue, the debates have transferred with relative ease to the internet and social networks.

## **Colombia**

The special act passed in 2005 which governs presidential elections provides that, irrespective of the guaranteed free access to radio and television operating during the campaign period, the registered candidates for the presidency have the right to conduct three debates of up to 60 minutes each, through formal express request by each and every one of them.

This same legal precept provides that the debates be subject to the rules and contents specified by the contenders in their request. The legal guarantee applies only to the candidates for the presidency, and is subject to the terms agreed in advance with the sponsors or organizers (who tend to be the media outlets). Once the terms are agreed, the contenders formally submit their request to election authorities, which perform no substantive function in the organization of the debates.

## **Costa Rica**

As a result of the recent reforms made to electoral laws in 2009, one of the powers of the election authority is to guarantee effective access by all



contending parties to the debates organized by the authority itself once the call for elections is issued.

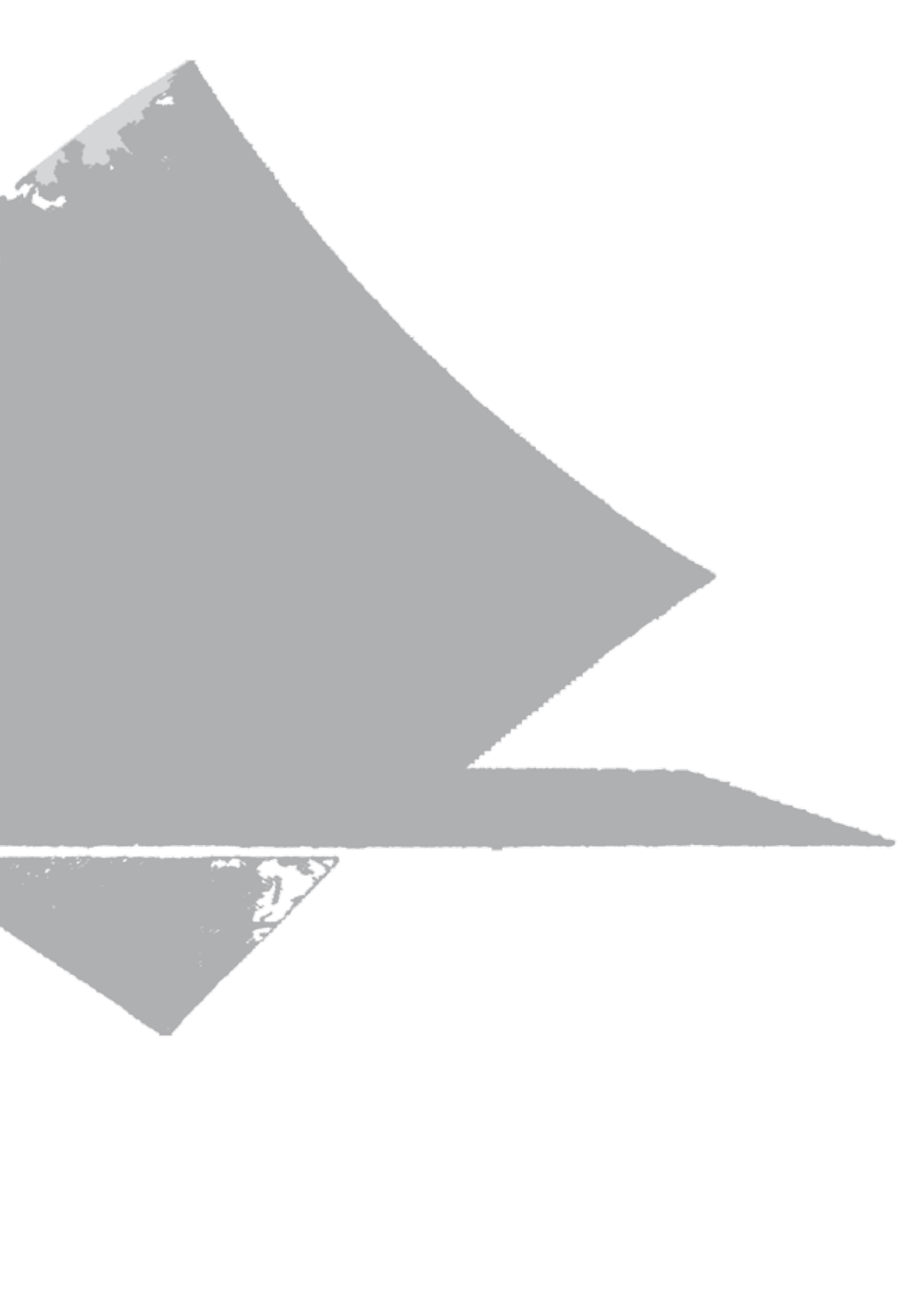
The election authority did not exercise its power to organize debates for the 2010 general elections. Yet it did issue a resolution that guarantees, for the purposes of any debate organized by public entities and specifically for the presidential election, the principle of equal access by all registered candidates, establishing basic guidelines to be upheld by the organizing entities. However, in the same resolution, for debates organized by private entities, there is no applicable obligation to invite all registered presidential candidates, as long as any exclusion of contenders is not arbitrary or made for discriminatory reasons.

## **Mexico**

Mexico is, at least for the time being, a peculiar case. This is because federal law provides that at least two debates may be held between the candidates (though for presidential elections only), establishing certain guidelines in this respect. Yet also and more fundamentally because it grants the election authority the responsibility to coordinate these debates, pursuant to the rules established by its administrative body (General Council) after prior consultation with the political parties.

As in other countries in the region, debates between presidential candidates had already existed before, but as part of a legal reform passed in 2008, and largely in keeping with the powers of the election authority to manage the government's times on radio and television during election processes, now the authority is directly responsible for managing and conducting the debates and did so for the first time during the 2012 federal elections.





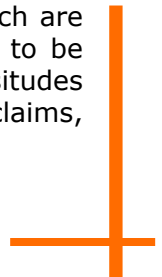


## IX. PENALTIES

There is little point in having regulations (however commendable or sophisticated they may be) that seek to regulate campaigns and the contest for votes if there are no powers, capabilities and instruments to monitor compliance, to identify or investigate alleged violations and, where appropriate, to penalize violations.<sup>20</sup>

This process (with all formalities to guarantee due process) can be very long and complex. It is outside the scope of this study to identify and discuss each of its stages or problems; therefore, we will briefly highlight some of its key components.

First, the capacity or ability to identify failings or legal violations may vary significantly from one regulation or situation to another. It is not the same to discover, report and attempt to prove the violation of a regulation on, for example, the contents of a promotional piece or advertisement when this piece includes a prohibited national or religious symbol, as it is to do so for a contribution which is illegal based on its source or amount, unless it is made blatantly (which would very unlikely be reported in accounting records or in a financial transaction). These extremes illustrate a problem of visibility in the violation; there are some violations that may be obvious and clear, and others that would require a long and perhaps complex investigation to uncover. We must also note the difference between violations which are automatically penalized and those which must be formally reported to be addressed and, where appropriate, investigated, noting also the vicissitudes arising with respect to the persons who are authorized to submit such claims, as well as their timing and the evidence that must be offered.





Another problem is that of the magnitude, intensity or severity of the presumed violation. It is likely that, although both are alleged to be a transgression (illegal by definition), it is not the same to exceed the ceiling on campaign expenditures by a small amount as it is to exceed that ceiling by double the established amount or more. There will always be the suspicion that someone who was able to do so for just a small amount would be equally able to do so for much more, given that what might have happened was a problem of restricting access to more resources, limitations on the investigation process or an incomplete discovery of a larger issue of illegal financing. But even with documentary evidence, it is likely that it is not the same to have purchased a few more minutes of advertising during the last week of a campaign as it is to have done so systematically throughout the campaign.

Discussions on this issue lead almost inevitably to the suggestion that, to be fair and effective (and prevent recidivism), the penalty must be proportional to the violation: the greater the violation, the stricter the penalty. However, there are practical problems: Where is this point of equilibrium, and how can it be found? How can it be determined? On what basis? It is the delicate responsibility of electoral authorities to determine the extent of the penalty for each particular case, and we must start with the premise that the penalties established in the laws of the region are a product, to a large extent, of the perceptions, assessments, calculations and agreements of the parliamentary representatives. They are, in the last instance, the very subjects at which these regulations are aimed, and who ultimately will suffer their effects, which is why a context of stronger demand is needed for them to go beyond conventional penalties.

That said, an exploration of the routes taken in the region may offer us evidence of the prevailing trends and perhaps uncover some interesting characteristics. We have chosen to offer a general and comparative overview of the type of penalties established, yet only for some of the most representative regulations. Following the chronological order whereby an election campaign might be conducted, Table 11 summarizes the types of penalties which are applied to violations of the regulations on six very specific topics, based on which we can make the following specific observations:

### 1. CAMPAIGN ACTIVITIES PERFORMED OUTSIDE THE ESTABLISHED TERMS

While there is a recurring question in the region regarding 'early campaigning', it is important to note that, when provisions on this issue exist, the penalties refer more specifically and comprehensively to acts which are verified outside the periods established by law. Thus they also consider (and punish) those acts which, though less frequent yet equally in violation of the law and the principle of equity, can be verified after the date established for the completion of campaigns, specifically where an electoral silence is established prior to election day (as in the overwhelming majority of countries in the region). This is documented in Chapter I.4.



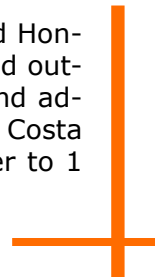


As was also examined in Chapter I, there are countries where the distinction is made (though today this distinction can be very complex) between conventional campaigning and election publicity and advertising, even establishing different periods during which each is permitted throughout the election period. Thus the information contained in Table 11 and detailed in Appendix 5 includes the penalties established both for campaigning performed before and/or after the permitted campaign periods, as well as those imposed for general campaigning and/or more specific activities relating to media publicity and advertising, all when performed outside said periods.

Based on the information contained in Table 2 of Chapter I, in most of the 18 countries reviewed there is some provision on the periods during which campaign activities may be conducted. In seven of these countries (Colombia, the Dominican Republic, Ecuador, Guatemala, Nicaragua, Uruguay and Venezuela) there is no penalty established (at least expressly) for violation of any provision on the periods or times established for campaign activities. In other words, if campaigning is verified or reported to be performed before or after the periods established for such activities, there is no penalty whatsoever in these countries, at least in accordance with the terms expressly set forth in the pertinent legislation. Having said that, there is a rather particular provision applied in Ecuador, where the expenses associated with campaign activities undertaken outside the permitted time period are considered part of the established limits on campaign expenditure.

However, at least in cases such as Colombia, Guatemala and Venezuela, the law empowers the electoral authorities to impose penalties for violations of the law, which could be extended to violations related to campaign periods. While in Colombia the catalogue of penalties does mention that they must maintain accordance with the severity of the violation, and the first such penalty provides for the suspension or removal of state financing or free media access, this would be difficult and controversial to apply for early campaigning. Likewise, in Guatemala the electoral authority is only authorized to impose (and has done so for the violation we discuss here) fines whose amounts are laughable given the simple cost-benefit calculation for offenders, who can also seek amparo proceedings to avoid payment. In Venezuela there are no explicitly established penalties for campaigning outside the periods provided by authorities for each specific election process, but the National Electoral Council has powers to penalize violations of law, and campaign regulations specify that violations not otherwise specified must be penalized with fines which can be exchanged for days of imprisonment.

In another five countries (Bolivia, Brazil, Costa Rica, El Salvador and Honduras) the law effectively establishes penalties for activities performed outside the established periods, but they refer exclusively to publicity and advertising activities. There are also penalties expressly established in Costa Rica for failure to respect the Christmas silence period (16 December to 1 January).





Given this, there are just six countries in which the penalties are understood to be applicable to any campaigning performed outside the established terms: Argentina, Chile, Mexico, Panama, Paraguay and Peru. However, in Panama and Paraguay there is a curious twist: the law refers explicitly to penalties applicable to acts performed during the pre-election silence period, and as such they do not apply to (early) activities performed prior to the campaign period.

As shown in Appendix 5, in 10 of the 13 countries where penalties can be imposed for violations of this kind (including Colombia and Guatemala), these penalties expressly include those of a monetary nature — i.e. fines. Furthermore, in six of them (Brazil, Costa Rica, El Salvador, Guatemala, Honduras and Panama), this is the only type of penalty available. Needless to say, with this and other types of penalties, the amount of the fines and their effectiveness to deter or inhibit such practices must consider contextual factors that, regardless of size, tend to be affected by cost–benefit calculations made by the offenders themselves.

At the other end of the scale are Paraguay and Peru, where violations can result in imprisonment (Paraguayan electoral law provides for such penalties, but its penal code specifically forbids them); Mexico, where a graded scale of penalties is applied, ranging from public reprimand to a reduction in public subsidy; and Argentina, where the right to receive the government subsidy can be lost for a period of up to four years.

**TABLE 11**  
ESTABLISHED PENALTIES FOR VIOLATIONS OF SPECIFIC REGULATIONS

Country	Campaigning Before/After Campaign Periods	Purchase of Advertising	Publication of Polls	Untimely Accountability	Exceeding of Expense Limits	Illegal Sources or Amounts
Argentina	Yes	Yes	Yes	Yes	Yes	Yes
Bolivia	Yes	Yes	No	Pending definition	Not applicable	Pending definition
Brazil	Yes	Yes	No	Yes	No	Yes
Chile	Yes	Yes	Not applicable	Yes	Yes	Yes
Colombia	No express provision	No express provision	No express provision	Yes	Yes	Yes
Costa Rica	Yes	Not applicable	Yes	Yes	Not applicable	Yes
Dominican Republic	No	No	Not applicable	No	Not applicable	Yes
Ecuador	No	Yes	Yes	Yes	Yes	Yes
El Salvador	Yes	Yes	Yes	No	Not applicable	Yes



**TABLE 11**  
**(CONTINUED)**

Country	Campaigning Before/After Campaign Periods	Purchase of Advertising	Publication of Polls	Untimely Accountability	Exceeding of Expense Limits	Illegal Sources or Amounts
Guatemala	No express provision	No express provision	No express provision	No express provision	No express provision	No express provision
Honduras	Yes	Yes	Yes	No	Not applicable	Yes
Mexico	Yes	Yes	Yes	Yes	Yes	Yes
Nicaragua	No	No	Not applicable	No	Not applicable	Yes
Panama	Yes	Yes	Yes	Yes	Not applicable	Yes
Paraguay	Yes	Yes	Yes	Yes	Yes	Yes
Peru	Yes	No	Yes	Yes	Not applicable	Yes
Uruguay	No	No	Not applicable	Yes	Not applicable	Yes
Venezuela	No express provision	Yes	Yes	No express provision	Not applicable	No express provision

## 2. TERMS OR LIMITS FOR HIRING AND/OR BROADCASTING ADVERTISING IN MEDIA OUTLETS

This group includes the penalties established for violation of the very varied regulations regarding access to and use of media outlets for election publicity and advertising purposes, except for those which refer to the periods during which such access and use are permitted, covered in the preceding section. The range of regulations which cover the penalties listed here is very broad and varies significantly from one jurisdiction to another (as shown, especially, in Chapter IV and the corresponding Table 8). However, we seek to offer a general overview of the nature and magnitude of these penalties, and not necessarily of their link or correlation with the different laws.

Although all 18 countries have some type of regulation in this regard, the laws of seven of them do not establish express penalties for violations, five of which are countries which also appeared in this category in the previous section: Colombia, the Dominican Republic, Guatemala, Nicaragua and Uruguay, plus also Costa Rica and Peru. Again the same clarification must be made as in the previous section regarding Colombia and Guatemala: while there are no express penalties for violations of these kinds of regulations, it is within the authorities' powers to impose the general penalties established by law.



Based on the specific case of these last two countries, the number of countries in which penalties can be imposed increases to 13. Eleven of these countries also rely predominantly on monetary fines, and in five (Brazil, Chile, Guatemala, Panama and Paraguay) these types of penalties are the only kind that authorities can apply. In most of these cases, the fines are in fact impossible on the media outlets that violate the prohibitions or restrictions established by law.

Argentina, Bolivia and Ecuador expressly include the option of ordering the suspension of the publicity used in violation of legal regulations; in Bolivia the responsible media outlet can be prohibited from continuing to run election advertising; in El Salvador and Honduras the managers of public media outlets that violate the law can be removed; and in Venezuela the fine can be exchanged for days in prison — truly a rather unattractive option.

### 3. PUBLICATION OF ELECTION POLLS OR SURVEYS

Given the level of specificity of the provisions on this matter, it would only be feasible to impose penalties for violation or breach in the 14 countries which, as documented in Chapter VII and shown in Table 11, have temporal restrictions and/or requirements which must be upheld for the publication of election polls.

The laws of four of these 14 countries do not include express penalties for violations of the established provisions: Bolivia (where the regulations on this matter remain pending), Brazil, Colombia and Guatemala. In the 10 remaining countries penalties are set forth which again include, though this time more generally, those of a monetary nature, which in six countries are the only kind of penalty that can be imposed and which are invariably extended to the media outlets that published or disseminated the offending polls. As such, the fine is the penalty par excellence for violation of the regulations relating to the publication or dissemination of pre-election poll results.

On the other hand, in Argentina and Ecuador, in addition to the fine, companies that repeatedly violate may be prohibited from hiring and disseminating polls for a period that can include two to four election cycles (Argentina) or six months (Ecuador). In Paraguay imprisonment can also be ordered for the directors of the companies involved, for a period ranging from two to six months, though, as already mentioned, this penalty cannot be applied based on the country's penal code.

### 4. ACCOUNTABILITY

This category includes the penalties established for violation by political organizations and/or candidates of the obligations relating to the correct submission of the reports or documents related to campaign income and expenditure or, where appropriate, to the availability of the corresponding



documentation, for the competent authorities to complete their functions of review and oversight.

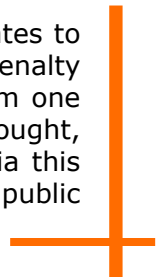
It is understood that the submission of these reports or documents (especially in their final or consolidated version where there is also an obligation to submit partial or preliminary documentation prior to election day) is essential for the authorities to be able to detect or investigate any violation of specific regulations on campaign financing or expenditures.

As shown in Appendix 2, with the notable exception of El Salvador (where only independent candidates must comply), the legislation of the other 17 countries in the region imposes some requirement or mechanism for accountability with respect to the contenders' campaign income and expenditures (although Bolivia's new regulations on this matter remain pending), so it is not possible to specify at present either the terms of the accountability process or the penalties for violation. Among the 16 remaining countries, there are four whose legislation includes no express penalty for non-compliance with the obligation of accountability as prescribed by law (the Dominican Republic, Guatemala, Honduras and Nicaragua).

Venezuela is different from the previous group. Although the law does not establish express penalties for violations of this kind, there is a control and accountability system which political organizations are required to use to record all campaign financial transactions and to submit both a final consolidated report and monthly campaign reports. In addition to election authorities being aware of and empowered to penalize all violations, the regulations themselves mention that in all cases of violation not expressly provided, fines can be imposed.

Of the 11 countries with express penalties, in six (Argentina, Chile, Costa Rica, Mexico, Panama and Uruguay) this basically involves fines, although in Costa Rica it can mean imprisonment for party treasurers. In Argentina an amount is calculated for each day of delay in the submission of accounts, but after 90 days the authorities can order the temporary suspension of public subsidies. In Uruguay a mechanism similar to Argentina's has been adopted, applying an amount for each day of delay, and if the transgression is not addressed and the fine paid within a given period, the public subsidy is withheld. In Mexico there is a graded scale for penalties, but for serious and repeated violations of financial obligations there is the possibility that a party could lose its legal status.

In the other five countries the core focus of the penalty regime relates to withholding or suspending the public subsidy. In Brazil the applicable penalty is the suspension of public subsidies for a period that can range from one to 12 months, in addition to the fact that criminal charges can be brought, which would also lead to the cancellation of legal status. In Colombia this is one of the violations that calls for the suspension or withholding of public





subsidy or free access to media outlets, which can be extended to the suspension or removal of a political organization's legal registration. In Ecuador registration can be suspended for 12 months, and if the political organization continues to violate regulations after this period, suspension becomes permanent. In Paraguay failure to meet the deadlines established for delivering financial reports can result in the suspension of all public subsidies for up to three years or two elections. The case of Peru is a bit paradoxical, in that the penalty consists of retaining the public subsidy, which has never been applied since its legal introduction in 2003, and, additionally, it only applies if the annual financial report is not submitted and not necessarily the campaign report.

## 5. CEILINGS ON CAMPAIGN EXPENDITURES

In only eight countries in the region do the laws include regulations on establishing limits on the expenditures that the contenders may incur on campaign activities. Therefore, these are the only countries with penalties for violations of the established ceilings.

We have already discussed the particularities of Brazil (where regulations must be issued establishing expense limits for each election, but if no regulations are issued, the parties themselves determine the applicable limits for their candidates to the various offices and must report them to the authorities, thereby losing the regulatory aim of equity) and of Guatemala (where a global limit is established for all elected positions contended, which applies equally to political organizations that put forward one single candidate — for president, for example — and to those which put forward candidates for all positions, resulting in these regulations being entirely ineffective and illogical).

As such, it is hardly surprising that in Brazil there are no express penalties for violations of the campaign ceilings, unlike the case of violations of other norms regulating financing control, while the Guatemalan authority has the sole recourse of imposing laughable fines (against which the contenders can protect themselves before judicial authorities to avoid or delay payment).

In five of the other six countries where ceilings on campaign expenditures have greater backing fines are imposed to penalize violations. However, while in Argentina and Mexico, as with penalties for other violations, these fines are part of a broader repertoire of penalties which have been discussed previously, in Chile and Ecuador they are the only recourse established to penalize these violations. It is curious that in both cases where the fine is the only established penalty there is a certain principle or logic in its use, imposing harsher penalties (a larger fine) in cases where there is greater evidence that the limit was exceeded. Thus in Chile the applicable fine is twice the excess amount when the established limit is exceeded by less than 30 per cent, three times the excess amount when the limit is exceeded by between 30 and 50 per cent, and five times the excess amount when exceed



by more than 50 per cent. In Ecuador the penalty is two times the excess amount when the limit is exceeded by less than 30 per cent, and four times the excess amount if exceeded by more than 30 per cent.

In Paraguay applicable penalties include the loss of the right to receive permanent public subsidy (for a period of three to five years) and the subsidy for campaign expenses (for up to three elections), as well as fines equal to two times the amount exceeded, with the specification that these penalties can be either applied jointly or separately but must both be applied in cases of recidivism.

The case of Colombia is something of a paradigm, as the law governing political parties established literally and categorically that the violation of ceilings on campaign expenditures is penalized with the loss of the elected position. To this end, the election authority is permitted to submit the corresponding request to the competent authorities once the violation is determined.

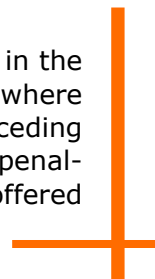
## 6. SOURCES AND TOTALS OF CAMPAIGN FINANCING

As was briefly shown in Section 2 of Chapter III, all countries in the region, under different terms and conditions, have provisions aimed at regulating and controlling the sources and/or amount of contributions made to finance election campaigns. Understandably, the negative regulations (prohibitions, restrictions or limits) implemented are extensive and have notable variations from one country to another.

Interpreting the scope of these regulations in a broad sense, there are penalties in all countries for violations and transgressions of these regulations. In other words, this is the only case in which we find both regulations and penalties. While the terms are not explicit or exact in all cases, the violations can be penalized. Indeed, there are only three notable exceptions:

- Guatemala, where the authority is only empowered to impose very small fines, which can also be avoided through the judiciary;
- the electoral authority of Venezuela can impose fines, exchangeable for imprisonment, for any unforeseen, unestablished violation; and
- in Bolivia the regulations on this matter and thus the exact penalties that can be applied for these kinds of violations are pending.

As shown in the last column of Table 11 and detailed in Appendix 5, in the other 16 countries there are express penalties (including Colombia, where the status of violations of this kind is different from that of the preceding categories, as the law does make explicit reference to the applicable penalties). The catalogue of penalties reported for each specific country is offered





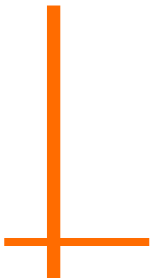
essentially for informational purposes, seeking to account for the overall range in the region, while also highlighting some significant recurring or exceptional characteristics.

The most common approach again is that of imposing fines as a conventional penalty to punish violations of the restrictions on the sources and amounts of contributions made towards campaign expenditures, as is the case in the laws of 15 countries (the exceptions are Colombia and the Dominican Republic, where penalties relating to the withholding or suspension of public subsidies prevail). In eight of them (Chile, El Salvador, Guatemala, Honduras, Panama, Paraguay, Peru and Uruguay) these types of penalties are the only kind expressly established by law.

In the other seven countries other types of penalties can be applied. Nevertheless, while in Argentina, Brazil and Mexico these penalties are part of an available repertoire based on the severity or repetition of the violation (including the suspension or reduction of the public subsidy), in Costa Rica, Ecuador and Nicaragua they include other penalties, including imprisonment in Costa Rica (with cases being heard in criminal courts) and the suspension of political rights for offenders in Ecuador and Nicaragua.

Venezuela is included in this category, though it presents certain particularities. The regulations governing election campaigns do not establish specific penalties for violations relating to the sources of funding (there are no limits for individual or global contributions), although they do specify that those unforeseen violations which are not established will be punishable with fines of 500 to 700 taxation units, or by one day in prison per unit imposed by way of penalty. On this basis, it can be deduced that, in principle, violations resulting from contributions from illegal sources are punishable by fine or arrest, but this provision seems to leave intact the power granted by law to the main electoral authority, the National Electoral Council, to impose other types of penalties.

Three countries (Brazil, Colombia and Ecuador) share the most severe punishment available to electoral authorities: violations of regulations on campaign financing can result in the loss of the credentials or of the post won by the offenders, depending on the time at which the violation is proven and punished.









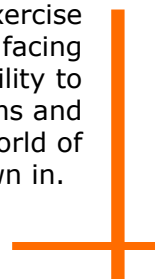


## X. FINAL REFLECTION AND COMMENTARY

Despite the criticism that can be made of the electoral regulations, institutions, procedures and practices in the region, and of the nuances inherent in each individual country, these tools have become rooted as a support and essential benchmark for the design of institutional order in most Latin American countries and of their democratic governance. That said, one cannot help but notice the significant gap that exists between the preaching and invocation for democratic ideals and values (the mechanisms through which social order is developed and maintained at its various levels) and the way in which most of the region's people experience or suffer these realities on a daily basis.

From this perspective, it is logical and understandable that in the context of societies marked by profound inequalities and asymmetries in terms of the distribution of economic wealth, political power and (whether we like it or not) the condition and capacity of the citizenry to realize and exercise their fundamental rights, and in which, at the same time, electoral democracy (or more specifically, the electoral process) has come to be acknowledged as the only valid and legitimate means of selecting and renewing public authorities, the conditions and regulations governing elections have become the subject of priority attention and demands for constant adjustment.

The core of this issue centres precisely on that: the transcendence and legitimacy of elections. The importance given to the holding and exercise of political power is questioned ever more bitterly when it comes to facing the great public and shared challenges of our times. However, the ability to access this power continues to be the subject of ambitions, fascinations and obsessions on the part of people who were trained or made for the world of politics, but also for many others who simply feel a calling or are drawn in.





If politics and elections make up the plane of social life in which, almost quintessentially, the highest ideals and aspirations of many of the most sordid social conducts and practices are combined, bound and often collided, then Latin American may be a most paradigmatic example of this. The narrative represented by a large part of the regulations relating to election campaigns, with the conditions for the electoral contest (controls, restrictions, prohibitions, limitations), tells us just that.

Without any doubt, the demands for guaranteed conditions of equity and some of the regulations that seek to respond to these demands, at least in the regulatory plane, end up expressing this paradox. On the one hand, it is demanded (from the streets) and sought (by the legislature), within the context of inequalities between the contenders in terms of their ability or capacity to access the media or resources to seek votes, that there be a minimum set of guarantees for equal opportunities to aspire to achieve this. On the other hand, processing these regulations and defining their nature and scope (especially including the penalties applicable in case of violation) are not only adjusted based on very natural and pragmatic political/partisan cost-benefit calculations but are also fraught with an atavistic culture of mutual mistrust between the contenders.

This culture is based on the premise that it is always the 'other' who agrees or seeks to adopt a regulation, because they are already thinking about how to circumvent it or find a loophole to avoid it, and, since this conviction is mutual, the best way forward is to transfer responsibility to the authorities to ensure compliance. The logic that then follows is more or less foreseeable: if the law is not upheld, it is due to negligence, inaction or collusion (with the offenders, of course) of the authorities, as it is rarely noted that the regulations and responsibilities they wield are not always accompanied by the powers, resources and tools to guarantee compliance, and, further still, that even in the best of scenarios the powers and tools made available to authorities are not consistent with the demands made of them.

As a whole, the outlook of the region is fairly encouraging. If we consider that it is not at all simple for our representatives (the persons most affected by and directly subject to these regulations) to impose prohibitions and restrictions on themselves, thus limiting their access to power, then we must assess the achievements made and the opportunities created to strengthen both the legal frameworks as well as the behaviours and practices that these regulations seek to adjust or mould as quite positive indeed. The regulatory universe is increasingly broad and very diverse, and although the data compared are very heterogeneous, as they refer to highly contextual conditions and requirements, there are also common patterns emerging.

While some inaccuracies and ambiguities remain which hinder proper oversight in the conceptualization of campaigns and their basic elements, progress has been made in defining the time-frames during which the activities



inherent to elections may be carried out. So-called early acts of campaigning are still, however, the subject to continuing complaints and controversies.

Furthermore, in the assessments, controversies and demands relating to the regulation or decision-making performed by the authorities as to what is included or meant by early acts of campaigning, there are two types of problems that tend to be encountered. The first relates to the difficulty in establishing a clear dividing line to distinguish between what are proselytizing activities (which political organizations generally have the right to perform at practically all times) and those that are properly related to campaigning. Precisely defining the periods during which campaigning can be performed helps to outline responses, but it addresses only part of the problem, that of timing; it must be supplemented with criteria or directives which address the central or substantive part. Thus, unless the criteria for differentiation and the evidence to enforce them are very categorical, or unless we reach a very high level of elaboration in the regulations or jurisprudence to be able to differentiate them, authorities will tend to be in a difficult position. The problem is aggravated if authorities lack the powers or abilities to impose effective remedies.

The other type of problem regards the subjects or actors involved in the alleged early acts of campaigning. There is a difference between the acts of this kind when performed by candidates who find themselves in equitable conditions in the sense that they do so without occupying any public office, and when performed by a sitting public servant seeking to be re-elected, or elected to a different office (often one at a higher hierarchical level or with greater responsibility; in many countries in the region, for example, the person who governs the capital city of the main province or department is often seen as a natural prospect to seek the presidency).

Here the problems to be addressed are no longer just conceptual (separating one act of campaigning from another which is not) but, instead, involve the possibility that the contender(s) for public office can make use of the resources (both symbolic and material) within their reach to promote their potential candidacy or to achieve some advantage in the contest. The handling of this problem is complex, because it brings the issue of use (or misuse) of public resources for personal or partisan promotion for electoral purposes into the debate, requiring that formulas be explored to prevent and penalize this where appropriate. As such, it may be that election authorities are granted the subsequent powers to oversee, control and impose penalties, opening yet another window for potential confrontation, this time between public authorities.

Despite the dilemmas and complexities involved in regulating this most thorny subject, and especially so for presidential elections, Colombia merits mention as a pioneer in the region in its efforts to subject this issue to legal regulation. Thus is, the purpose of Act 996 passed in 2005, also referred to



as the Statutory Act on Electoral Guarantees, which defines the legal framework for the electoral contest for the presidency when the sitting president seeks re-election or the vice-president seeks to be elected as president. It aims at achieving equal conditions between contenders, but also at establishing rules for the political and electoral participation of public servants. In Peru attempts have also been made to legally regulate this issue, but to date this continues to be an area that, perhaps due to its inherent complexity and despite the recriminations it raises, has been little explored.

It is likely that, given the problems of credibility and prestige suffered to a varied extent by the political parties from all countries in the region, and as part of the efforts for reform and modernization being made to attempt to adapt to the times, to re-establish the terms of their relationship with the citizen/voter and to respond to the demands for democratization, transparency and accountability, parties continue to advance initiatives for holding open and mandatory internal elections for the selection of their candidates for public office. This will result in new requirements for regulation, which could end up significantly expanding the range of powers and responsibilities, both administrative and arbitral, of election management bodies.

Regulations aimed at achieving control, transparency and minimum conditions of equity in the financing of political organizations and election campaigns have been notably expanded and strengthened during the past 10 or 15 years.

While there are three notable exceptions, public financing to directly subsidize campaign expenditures is a widely used practice in the region. This is explained by the centrality and public importance of elections for the preservation and strengthening of democratic institutions. It is also explained by its usefulness in guaranteeing minimum conditions of equity in the contest and in avoiding, to the extent possible, plutocratic financing which results in improper dependencies or influences in the contest for votes, and if the contenders or candidates are elected to public office, in the exercise of such positions. Needless to say, it can (but does not necessarily) also favour the introduction or strengthening of mechanisms for control, accountability and transparency with respect to the financial flows that fund election campaigns.

These objectives do not differ significantly from and can serve to strengthen and supplement those which prescribe public financing aimed at supporting the organization and regular operation of political organizations. They are also highly commendable and politically correct. What has not been clear and has not been rigorously analysed and documented is to what extent public subsidy has contributed to achieving these objectives and, consequently, to the adjustments or innovations which must be introduced to do so more effectively. Almost without exception, one essential question for which there

is a lack of information and certainty is that which most affects this public subsidy: it relates to the actual expenses of a campaign. It is possible that, in several cases, its strictly quantitative weight and importance are in fact marginal, and while this factor cannot be the only one included in a comprehensive assessment of the relevance or effectiveness of the legal approach, a suggestive pathway could be uncovered to rethink the issue and its actual and potential virtues.

This line of thought leads to the issue of regulations on private financing and the mechanisms for control and accountability. The area of party and election financing is where the most elevated ideals, most pragmatic calculations and most sinister practices often converge, take root and collide. There tend to be good reasons, and well-founded resentments, behind the prohibitions imposed on certain sources of financing, and even behind the individual or total restrictions or limits imposed when private funding is permitted.

The greatest complications arise when attempting to ensure effective compliance with these regulations. The greatest problem that tends to become apparent is that of the powers, resources and capabilities granted to the electoral authorities to perform these responsibilities. Within this problem there are in fact three distinct problems. The first is the nature and scope of the legal powers, and here we must determine whether they exceed mere formal receipt and perhaps an accounting review, reaching the point of authorizing them to conduct, for example, extensive financial audits and/or detailed investigations of alleged violations.

The second relates to the financial resources transferred to authorities and their capabilities to exercise their powers. It is one thing that the resources allocated be sufficient and appropriate to perform the functions of control and oversight, while it is another that authorities should be capable of acquiring the knowledge, developing the skills and designing the tools necessary to carry out such functions appropriately.

The third, which permeates and to a large extent determines the effectiveness of the two preceding problems, refers to the actual level of autonomy and independence of the authority to exercise these kinds of powers. This does not necessarily relate to their formal powers (enshrined within the legal framework) but, rather, refers to the way in which the entity is formed, the areas of which it is comprised and the capacity, will and leeway enjoyed or sought by authorities to perform real functions of control and oversight.

In short, there is little point in having regulations, no matter how sound, consistent or sophisticated they are, to regulate and control the financing of political organizations and election campaigns, if the competent authorities do not have the necessary powers, abilities and resources to ensure com-



pliance and to properly investigate and, where appropriate, penalize any violations.

When presented in these terms, this argument requires the introduction of another pair of elements in our analysis. The first, which, given its frequency, has become widely accepted, relates to the type of penalties that can and must be imposed to prohibit or discourage the proliferation or repetition of practices that violate the law. As has been documented, in most countries the law favours monetary penalties, and in some cases these are the only penalties established. There is extensive support for exploring other types of penalties that are more effective, without losing sight of the principle of proportionality to the magnitude of the violations they punish and seek to prevent. As shown in Chapter 9, there are some examples in the region that are worthy of more careful evaluation.

The other is one of serious, unprejudiced and rigorous assessment of the level of correspondence which, in strictly practical or operational terms, exists between the meaning of the regulations and the abilities and tools which are effectively available, even in the best of scenarios, to ensure compliance or to identify violations accurately and in a timely manner so as to respond. The imposing of ceilings on campaign expenditures is a clear example of a lack of correspondence between the intention of the regulation and the tools that can be used to verify compliance. All the mechanisms devised to regulate, control and supervise campaign financing can be very effective when operations are recorded, documented and can be tracked using accounting or banking systems, but the issue becomes very complicated when funds flow through 'parallel' accounts or from 'informal' cash contributions. There are serious attempts at addressing these problems, but it is evident that proper articulation and implementation requires extraordinary abilities, resources and efforts, which are not easily achieved.

Another undoubtedly significant problem relates to the assessments, evaluations and subsequent attempts at regulation relating to access to and use and influence of media outlets during elections, with their ability to establish the terms of the competition and to sway its outcome. As we have tried to demonstrate, this problem has many angles; the media–election relationship is multidimensional and does not operate at all in a linear or unambiguous direction. It is likely that the media's ability to influence the behaviour of voters and the outcome of elections is overestimated, but by dint of repetition the belief has been installed in the collective imagination that it is an essential weapon and its influence can be decisive.

Thus it is hardly surprising that in many countries in the region where the prevailing model allows the purchase of times and spaces for the dissemination of election advertising in media outlets there is a firm suspicion that this is the item on which parties and candidates spend the most resources during a campaign — i.e. that the production and purchasing of spaces for





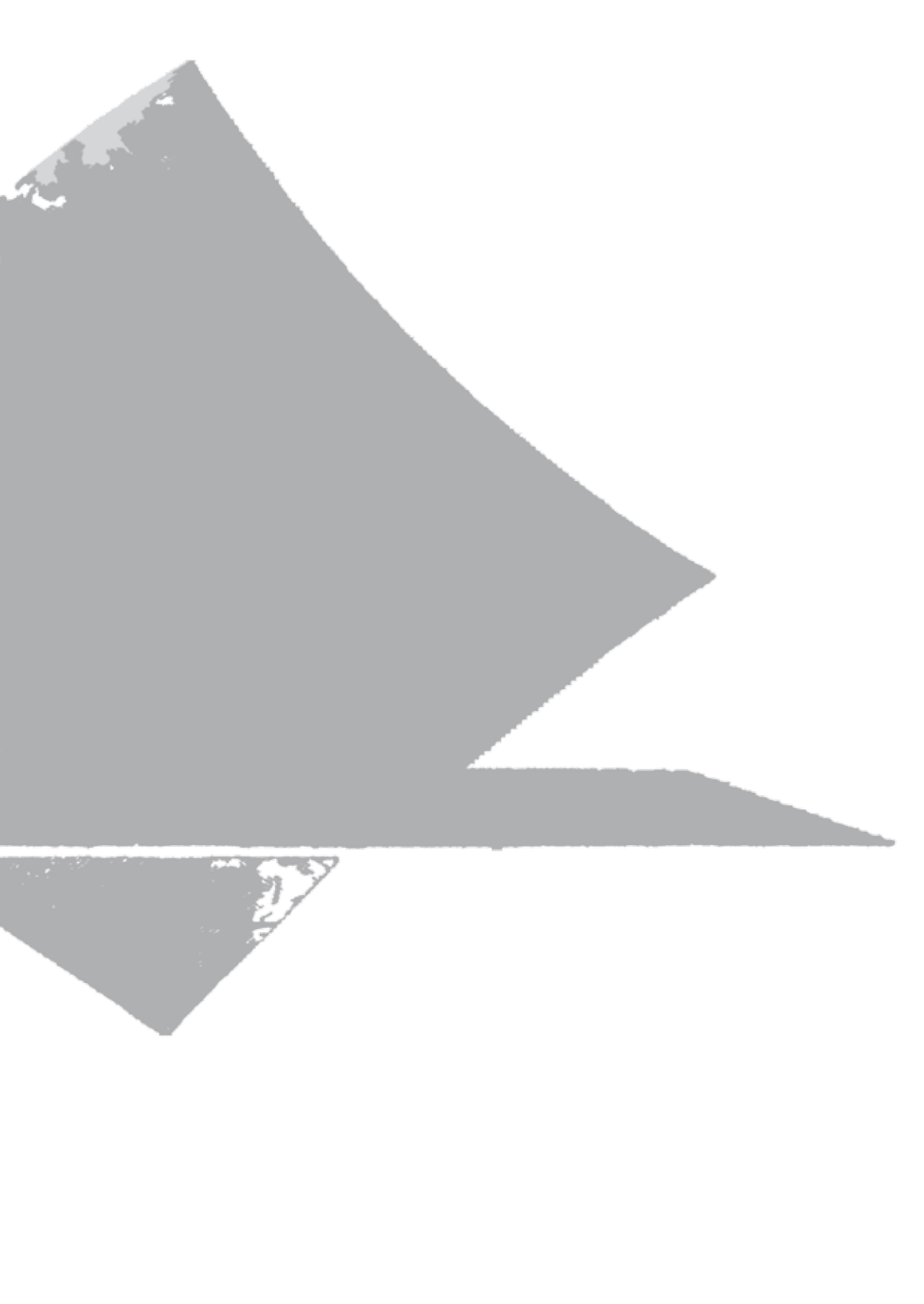
advertising is the main expenditure throughout the life of a campaign.<sup>21</sup> This conviction also explains the importance given and time dedicated by contenders to their media relations, agenda and exposure. It is also within this logic that we can explain and make sense of the varying regulations which seek to guarantee conditions of equity in access to and use of media outlets for election purposes.

The legal provisions relating to the other specific topics discussed in this study, such as those aimed at preventing the use of public resources for political/electoral purposes, as well as those established with respect to the contents of advertising and the use of opinion polls, all underline the density and diversity which this regulatory framework has achieved and the prospects for expansion in the region, though they also represent the systematic augmentation of the powers and responsibilities to be performed by election authorities. This expansion and diversification of the regulatory universe is not only imposing new demands and the development of new abilities and skills on the authorities but is also re-establishing their very nature and essence to a large extent.

There are grounds to argue that, given the formal and actual functions these bodies perform in the political/institutional framework, especially in the context of a democracy, most electoral bodies from the region have never fully reconciled the conventional concept of election managers or administrators. Their role and functions have often transcended that of a simple bureaucracy that organizes elections and counts votes, though their *raison d'être* and identity were forged in the context of the imperatives, demands and expectations relating to organizing elections and delivering results that meet basic standards of cleanliness, transparency, impartiality and credibility. Today, as we have tried to demonstrate, when the focus is often misplaced on their arbitral role in the contest for votes and on the regulations relating to election campaigns — in the context of ever more competitive elections — these demands and expectations become even greater.

A significant evolution is underway in the nature and action of election authorities in the region, and the way in which new challenges are addressed and resolved will depend on the course and breadth this transformation takes.







## XI. FINAL NOTES

1. For a suggested critical analysis on the progress achieved, as well as the setbacks, pending tasks and challenges faced by the democracies of Latin America, we recommend a review of two reports from the United Nations Development Programme: *La democracia en América Latina: hacia una democracia de ciudadanas y ciudadanos*, Alfaguara, Argentina, 2004; and]], *Nuestra democracia*, Fondo de Cultura Económica, Mexico, 2010.
2. The main references for a general conceptualization of this topic in the region are those found on electoral campaigns in the two editions (1989 and 2003) of the *Diccionario Electoral del Centro de Asesoría y Promoción Electoral (CAPEL)*, IIDH-TEPJF-IIJ-IFE, México, 2003 (pp. 73 and 121, respectively; or 90 in its digital version: [http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD\\_1823872799/Diccionario\\_Electoral\\_Tomo%201.pdf](http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_1823872799/Diccionario_Electoral_Tomo%201.pdf)) and in the two editions of Dieter Nohlen, Daniel Zovatto, Jesús Orozco, José Thompson (compilers), *Tratado de derecho electoral comparado de América Latina*, Fondo de Cultura Económica, Mexico, 2007 (pp. 423 and 709, respectively; digital version: [http://www.idea.int/publications/electoral\\_law\\_la/upload/inlay\\_tratado.pdf](http://www.idea.int/publications/electoral_law_la/upload/inlay_tratado.pdf)).
3. The concept of a 'permanent campaign', often attributed to the American journalist Sidney Blumenthal (who came to serve as advisor to former president Bill Clinton), based on the publication of his book by that title in 1980, relates to the view that governments must conduct constant political (media) campaigning for their programmes, actions and achievements, to maintain the support and acceptance of public opinion. This premise, fervently embraced and prescribed by many political consultants, has been subject to countless interpretations and re-adaptations, many of which have significant implications in the area of elections, especially for public officials (elected or otherwise) who seek to maintain an ascending (or at least stable) political career (achieving re-election, for example).
4. Based on the universe of political consultancy, heavily influenced by the tactics of commercial advertising, there is also an idea that, to increase chances for success in an election campaign, it can be very important (perhaps more so than highlighting the virtues or attributes of the candidate's programme, proposals or personality) to highlight the deficiencies, errors or vulnerabilities of their opponents. The proliferation of these techniques in recent years (but also of the demands to impose restrictions on these techniques) has been notable in several countries in the region. In any case, the topic is a source of controversy, and many a voice has been raised and study published in their defence. See Fernando Aceves and Luis Sánchez, 'La regresión democrática en el 2006: Saldo de la publicidad mediática negativa y las instituciones electorales' in Vega, Portillo and Repoll (coords.), *Las claves necesarias de una comunicación para la democracia*, AMIC/ Universidad Juárez Autónoma de Tabasco, Mexico, 2008; Natalia Domínguez, 'Política 2.0: el uso de las redes sociales en la política argentina', *Anuario electrónico de estudios en Comunicación Social 'Disertaciones'*, 2012, Vol. 5, No. 1, Article 5; Beatriz Magaloni Kerpel, 'Elección racional y voto estratégico: algunas aplicaciones para el caso mexicano', *Política y Gobierno*, 1994, Vol. I, No. 2; Antonio Laguna, 'Liderazgo y Comunicación: La Personalización de la Política', *Análisi: Quaderns de comunicació i cultura*, 2011, No. 43; Peter Radunski, 'Management de la Comunicación Política,



- La americanización de las campañas electorales' (Original German title: 'Politische Kommunikationsmanagement – Die Amerikanisierung der Wahlkämpfe'), in Bertelsmann Stiftung (ed.), *Politik überzeugend vermitteln*, Germany, 1996.
5. To find out more about the regional overview in terms of the adoption and regulation of the varying instruments of direct democracy, see IDEA International, *Democracia Directa en Latinoamérica*, 2009, Prometeo Libros, Argentina, 301 pp., as well as the section on Direct Democracy in the Electoral Knowledge Network, ACE ([http://aceproject.org/ace-es/focus/fo\\_direct-democracy](http://aceproject.org/ace-es/focus/fo_direct-democracy))
  6. To learn more about not only the details of the elements which define the American style (highly professionalized, media-based and personalized) of designing and operating an election campaign but also the way in which this approach is promoted and projected throughout the world, see Plasser, Fritz and Gunda Plasser, *La campaña global: los nuevos gurúes del marketing político en acción*, Temas Grupo Editorial, Argentina, 2002, 413 pp.
  7. The term tends to be used to define the position and behaviour of voters who consciously go to the polls to deliberately express, through the casting of a blank or null ballot (depending on the applicable rules in each country), their dissatisfaction with or rejection of all options of parties, candidates and proposals presented to them. The use of this approach is in contrast to that of passive abstention, which rather corresponds to a voter's apathy in participating in the elections.
  8. See the entries on election campaigns in both editions (1989 and 2003) of the *Diccionario Electoral* of CAPEL (pp. 73 and 121, respectively) and in both editions (1998 and 2007) of the *Tratado de derecho electoral comparado de América Latina* (pp. 423 and 709, respectively).
  9. See Steven Griner and Daniel Zovatto (eds), *De las Normas a las Buenas Prácticas: El desafío del financiamiento en América Latina*, Organization of American States and International Institute for Democracy and Electoral Assistance, Costa Rica, 2004; Organization of American States, *Política, Dinero y Poder: Un dilema para las democracias de las Américas*, Fondo de Cultura Económica, Mexico, 2011; Pablo Gutiérrez and Daniel Zovatto, *Financiamiento de los partidos políticos en América Latina*, Instituto de Investigaciones Jurídicas, 2011; Carlos Navarro Fierro, *Regímenes de financiamiento y fiscalización y garantías de equidad en la contienda electoral. Estudio comparado de 19 países de América Latina*, Instituto Federal Electoral – Organization of American States, Mexico, 2005.
  10. Robert Williams, 'Aspects of Party Finance and Political Corruption', in Robert Williams (ed.), *Party Finance and Political Corruption*, Macmillan, UK, 2000, (pp. 1–14 <https://www.palgrave.com/pdfs/0333739868.pdf>); International IDEA, *Funding of Political Parties and Election Campaigns*, International IDEA, Sweden, 2003, 245 pp ([http://www.idea.int/publications/funding\\_parties/funding\\_of\\_pp.pdf](http://www.idea.int/publications/funding_parties/funding_of_pp.pdf)); Ingrid Van Biezen, *Financing Political Parties and Election Campaigns – Guidelines*, Council of Europe Publishing, Germany, 2003, 82 pp. ([http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Financing\\_Political\\_Parties\\_en.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Financing_Political_Parties_en.pdf)); David Kupferschmidt, *Illicit Political Finance and State Capture - Discussion Paper*, International IDEA, Sweden, 2009, 49 pp. ([http://www.idea.int/resources/analysis/upload/IDEA\\_inlaga\\_low.pdf](http://www.idea.int/resources/analysis/upload/IDEA_inlaga_low.pdf)); Magnus Ohman, *Global Trends in the Regulation of Political Finance*, IFES, Washington, DC, february 2011 ([http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/IPSA\\_conference\\_paper\\_ohman.pdf](http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/IPSA_conference_paper_ohman.pdf)).
  11. To find out more about this topic, see Alonso Lujambio, 'La fiscalización de los gastos de los partidos políticos' in *Tratado de derecho electoral comparado de América Latina*; the chapter on 'Sistemas de control y fiscalización' in *Regímenes de financiamiento y fiscalización y garantías de equidad en la contienda electoral*, and Delia Ferreira Rubio, 'Financiamiento público: rendición de cuentas y divulgación' in *De las Normas a las Buenas Prácticas*.
  12. One of the most interesting approaches to this issue (that of the impact of media, and especially of audiovisual media, on the way politics is perceived, understood and carried out) is that of Sartori in *Homo Videns: La sociedad teledirigida*. Regarding the evolution and transformations in the relationship between political marketing and elections, see Gustavo Martínez Pandiani, *Marketing Político: campañas, medios y estrategias electorales*, Ugerman Editor, Argentina, 2007. For a more specific overview of the access to media outlets in the region, see Carlos Navarro Fierro, 'El acceso de los partidos políticos a los medios de comunicación' in *Tratado de derecho electoral comparado de América Latina* (pp. 795–820); Juan Rial, 'Financiamiento político; el acceso de los partidos a los medios de comunicación' in *De las normas a las buenas prácticas* (pp. 47–75).
  13. For more information on how new social media can be used in different electoral activities, see the relevant section from the ACE Encyclopaedia (<http://aceproject.org/ace-en/topics/me/meb/mab02e>). This section is also an excellent resource for a comprehensive overview on the relationship between the media and elections.



14. Although most of its specific references focus on Mexican law and experience, the reflections contained in Miguel Carbonell's text on the freedom of expression in electoral matters offers an excellent guide for this complex issue: Cuaderno 3 of the series *Temas selectos del Derecho Electoral*, published by the TEPJF ([http://www.te.gob.mx/documentacion/publicaciones/Temas\\_selectos/temas\\_libertad.pdf](http://www.te.gob.mx/documentacion/publicaciones/Temas_selectos/temas_libertad.pdf)).
15. Despite great awareness of the risk which in many contexts has been created with the improper use of public funds and resources for electoral purposes, and of the fact that this issue increasingly tends to be subject to broad complaints and concerns which, in some cases, have resulted in the adoption of very specific legal regulations, there is still a notable lack of any specialized literature. The most recent efforts at remedying this situation include Magnus Ohman, *Abuse of State Resources: A brief introduction to what it is, how to regulate against it and how to implement such resources*, IFES, 2011 ([http://www.ifes.org/~media/Files/Publications/Papers/2011/Georgia\\_Abuse\\_of\\_state\\_resources\\_July\\_2011.pdf](http://www.ifes.org/~media/Files/Publications/Papers/2011/Georgia_Abuse_of_state_resources_July_2011.pdf)).
16. The AMAI handbook for election polls ([http://www.amai.org/el\\_abc\\_de\\_opinion\\_publica\\_AMAI.php](http://www.amai.org/el_abc_de_opinion_publica_AMAI.php))
17. The portal of the World Association for Public Opinion Research, Latin American chapter, contains a wealth of materials: [www.waporlatinoamerica.org](http://www.waporlatinoamerica.org).
18. Wolfgang Donsbach, *Who's Afraid of Election Polls? Normative and Empirical Arguments for Freedom of Pre-Election Surveys*, World Association of Research Professionals (ESOMAR), Netherlands, 2001 (<http://wapor.org/wp-content/uploads/2011/02/who-is-afraid-of-opinion-polls.pdf>).
19. Fernando Javier Ruiz and Hernán Alberro, *Ola de Debates Electorales en América Latina: Luces y Sombras del Avance Democrático*, Konrad-Adenauer-Stiftung, Argentina ([http://www.kas.de/upload/auslandshomepages/medioslatinos/debates\\_electorales.pdf](http://www.kas.de/upload/auslandshomepages/medioslatinos/debates_electorales.pdf)).
20. See Chapter 4 on the control entities and system of penalties in the text by Félix Ulloa, 'Financiamiento político: órganos de control y regímenes de sanciones' in Steven Griner and Daniel Zovatto (eds.), *De las Normas a las Buenas Prácticas: El desafío del financiamiento en América Latina*, Organización de Estados Americanos e Instituto Internacional para la Democracia y la Asistencia Electoral, Costa Rica, 2004 (pp. 107–141).
21. On this specific matter, we suggest Chapter 5 of the text *Política, Dinero y Poder*, though it bears mention that it was one of the central reasons explaining the constitutional and legal reforms passed in Mexico which prohibited the purchasing of radio and television advertising for electoral purposes, because in addition to representing 65 per cent of campaign expenses, in practice it also represented a net transfer of resources from public coffers to the large media consortiums through a generous public subsidy for campaign expenditures.







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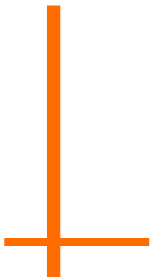
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# APPENDICES





## APPENDIX 1

### DEFINITIONS REGARDING ELECTION CAMPAIGNS OR PUBLICITY AND THEIR OBJECTIVES

Argentina	Election campaign: the set of activities performed by political groups, their candidates or third parties, through acts of mobilization, dissemination, publicity, opinion consulting and communication, presenting of plans and projects, and debates, all aimed at earning the political support of the electorate, which must be performed in a climate of democratic tolerance. Academic activities, conferences and symposiums shall not be considered integral parts of the election campaign.
Bolivia	Election publicity: any message disseminated with the purpose of promoting political organizations and candidates, presenting government programmes and/or soliciting votes. Dissemination may be made in public acts of campaigning or through paid messages in mass and interactive media outlets.
Brazil	None
Chile	Election publicity: publicity aimed at encouraging voters to cast their vote for certain candidates or to support any of the propositions submitted for referendum.
Colombia	<p>Election campaign (for purposes of financing and accountability): a set of activities performed with the aim of calling on the citizenry to vote a certain way or to abstain from doing so.</p> <p>Election publicity: any form of publicity made to earn the votes of the citizenry for political parties or movements, lists or candidates for popularly elected offices or public councils; for blank or white votes; or for an option in the mechanisms of citizen participation.</p> <p>Election campaign (presidential elections): includes activities of political promotion (disclosure of proposals for governance or political projects of the candidate) and of election publicity (direct call to vote for a candidate).</p>
Costa Rica	Publicity: actions performed by political parties to prepare and disseminate their ideas, opinions, government programmes and the biographies of their candidates for elected office, through whatever media outlets they deem appropriate.
Dominican Republic	Election publicity: that which is performed by parties to obtain electoral support during the election campaign period.
Ecuador	Election campaign: a set of legal activities carried out by political organizations, coalitions and candidates with the purpose of publicizing their ideological principles, government programmes and work plans, as well as the promotion of the candidates they put forward for each office.
El Salvador	No.
Guatemala	<p>Propaganda electoral: todos los escritos, publicaciones, imágenes, grabaciones sonoras y de video, dirigidos al electorado, producidos y difundidos por los partidos políticos y candidatos con el propósito de influir en la preferencia de los electores (Art 1 Reglamento del control y la fiscalización de las campañas publicitarias).</p> <p>Actividades de Campaña Electoral. Son las llevadas a cabo por las organizaciones políticas, para promocionar a determinado candidato en un proceso electoral, u opinión sobre determinado tema o temas en una consulta popular. Art 2 del Reglamento de Control y fiscalización del financiamiento publico y privado de las actividades permanentes y de campaña electoral de las organizaciones políticas).</p>





## APPENDIX 1 (CONTINUED)

Honduras	<p>Election campaign: a set of activities carried out by the actors in the process to publicize their ideological principles and government programmes, as well as to promote the candidates for elected office with the aim of winning the preferences of voters.</p> <p>Election publicity: activity which seeks to wield influence on the opinion and behaviour of the citizenry to encourage voting for a specific candidate, party or coalition, primarily through the use of media outlets (LE Article 143).</p>
Mexico	<p>Election campaign: a set of activities carried out by national political parties, coalitions and registered candidates to win votes.</p> <p>Acts of campaigning: public gatherings, assemblies, marches and, in general, all acts in which the candidates or representatives of political parties speak to the electorate to promote their candidacies.</p> <p>Election publicity: set of writings, publications, images, recordings, projections and expressions which, during the course of the election campaign, are produced and disseminated by political parties, registered candidates and their sympathizers, to present before the citizenry the registered candidacies.</p>
Nicaragua	<p>Election campaign: activities aimed at obtaining the vote of the citizenry, explaining ideological principles; political, social and economic programmes; and government platforms, which can be conducted at any place where citizens entitled to vote are gathered.</p>
Panama	<p>Election publicity: writings, publications, images, recordings, projections and expressions which are disseminated with the purpose of obtaining the support of the electorate or to conduct political proselytizing for electoral purposes.</p>
Paraguay	<p>Election publicity: its objective is the dissemination of the electoral platform, as well as the plans and programmes of the parties, political movements and coalitions, to encourage the support of the electorate. Election publicity is understood to mean the exposure in public spaces of processions, pintatas (paintings), and posters which contain the proposals of candidates or programmes for elected office, radio and television spaces with messages calling on the listener/viewer to vote for certain candidates or proposals, spaces in periodicals (daily newspapers, magazines or weeklies) with the proposals of the candidate or government programmes.</p>
Peru	None
Uruguay	None
Venezuela	<p>Election campaign: public activities developed by the candidates, political organizations and groups of voters which seek to encourage or persuade the electorate to vote for a candidate within the period established by the National Electoral Council.</p> <p>Election publicity: a set of publicity elements and pieces disseminated and exposed through all media outlets available, expressing the electoral messages of the organizations and their candidates for elected office, during the period of an election campaign.</p>



## APPENDIX 2

### ACCOUNTABILITY FOR CAMPAIGN INCOME AND EXPENDITURE

Country	Permanent Financing Control	Characteristics of Accountability for the Campaign Financing
Argentina	Yes	<p>Ten days prior to election day, the president and treasurer of the party and the financial and political heads of the campaign must submit a detailed report on public and private contributions received, indicating their source and amount, as well as the expenses incurred, indicating the income and expenditure forecast through the end of the campaign.</p> <p>Sixty days after the election, the same group of persons must submit a final detailed report on public contributions received, indicating their source and amount, as well as the expenses made by way of the campaign.</p>
Bolivia	Yes	<p>Political organizations authorized to participate in elections, referendums and recalls must submit an updated balance sheet of their net worth, including their sources of financing, on the call for elections, as well as a new balance sheet of net worth with itemization of expenditures at the end of the process.</p> <p>Within 60 days after election day, political organizations and partnerships of civil society and of native rural indigenous peoples and nations which perform election publicity in electoral processes, referendums and recalls are required to submit to the Electoral Body a sworn report detailing and documenting the sources of funding and the expenses made toward election advertising.</p>
Brazil	Yes	<p>The candidates must establish committees for the handling of their campaign finances, which must in turn submit a consolidated report on income and expenditure no more than 30 days after the election.</p> <p>In addition, parties, coalitions and candidates must publicize two itemized reports on income and expenditure during the campaign period (6 August and 6 September).</p>
Chile	Yes	<p>Within 30 days from the election, the general directors of the parties must submit to the Electoral Service both the party's general account of electoral income and expenditure and a general account of income and expenditure for all registered candidates.</p>
Colombia	Yes	<p>The National Electoral Council is authorized to regulate the procedure for the submission of reports on campaign income and expenditures. In any case, the parties, political movements and significant citizen groups will submit to the National Electoral Council consolidated reports on income and expenditure for the election campaigns in which they have participated, doing so within two months from the date of the election.</p>
Costa Rica	Yes	<p>During the period beginning with the call for election and ending on election day, the treasurers of the parties must submit to the Supreme Electoral Tribunal monthly reports on the contributions and donations received, specifying whether they were made for internal party activities or for the campaigning activities of a specific candidate. The reports must be accompanied by supporting documentation issued by an authorized public accountant.</p>



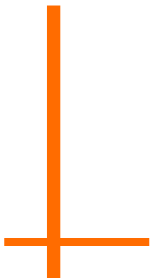
## APPENDIX 2 (CONTINUED)

Country	Permanent Financing Control	Characteristics of Accountability for the Campaign Financing
Dominican Republic	No	No more than three months after each election, the political parties must send to the Central Electoral Board itemized reports on their income and expenditure, so as to establish that their funds were not sourced illegally and have not been invested in illegal acts of organization, proselytizing and publicity.
Ecuador	No	Within 90 days from the date of the election, the person responsible for the finances of the campaign must settle all accounts corresponding to election campaign income and expenditure, and submit to the competent authorities a consolidated balance sheet, a list of contributors with breakdown of contribution amounts, and any supporting documentation required by law.
El Salvador	No	None
Guatemala	Yes	In each election year, the annual financial reports submitted by political organizations must include a specific report on the source, handling and allocation of the public and private funding of their election campaign. In addition, beginning with the call for elections, a simplified monthly report must be submitted.
Honduras	Yes	Political parties must submit to the Supreme Electoral Tribunal a report on income and expenditure for each election process.
Mexico	Yes	Political parties must submit, for each of the campaigns and within the first 15 days of the month of June of the election year, a preliminary report on expenses made both by themselves and by those in the corresponding geographical area. The political parties will submit a preliminary report.  The final reports will be submitted no later than 60 days after election day.
Nicaragua	No	Political parties must submit detailed and documented accounts for the public subsidy they receive for campaign expenses to the General Comptrollership of the Republic, the Ministry of Treasury and Public Credit and the Supreme Electoral Council.
Panama	No	Political parties are autonomous and independent and cannot undergo intervention or oversight of their internal regime by any government body or agency, except the Electoral Tribunal in its handling of the funds provided by the government for party expenses in election processes and in all other terms established by the pertinent legislation. The parties and candidates must, nonetheless, provide a sworn statement on campaign private income and expenditure within 60 days from election day.
Paraguay	Yes	Within 40 days from the elections, the administrators of the political parties must submit to the Electoral Tribunal a documented account of all campaign income and expenditure.



## APPENDIX 2 (CONTINUED)

Country	Permanent Financing Control	Characteristics of Accountability for the Campaign Financing
Peru	Yes	Within 30 days from the completion of the process, the treasurers of the parties must submit to the National Office of Electoral Processes a general balance sheet and financial statements for the period beginning with the call for elections and ending with the proclamation of results.
Uruguay	Yes	<p>Thirty days before a national election, the campaign committee of each party and candidate is required to submit to the Electoral Court an initial campaign budget, detailing the expected expenses and income, as well as the donations received to date.</p> <p>No more than 90 days after the elections, the campaign committee must submit definitive accounts, specifying the campaign's income and expenditure, as well as the source of all funding used.</p>
Venezuela	Yes	Organizations and candidates must submit accounts for the funding of their campaigns no more than 60 days after the celebration of elections, using the same format and mechanisms as the annual reports.





### APPENDIX 3 PROHIBITED CONTENTS IN ELECTION PUBLICITY

Argentina	--
Bolivia	<ul style="list-style-type: none"> <li>• Encouraging abstention</li> <li>• Undermining public sensitivities or the honour, dignity or privacy of the candidates or citizenry</li> <li>• Promoting violence, discrimination or intolerance</li> <li>• Offering money or privileges</li> <li>• Offending or injuring the honour, dignity or private life of the candidates</li> <li>• Using religious symbols or references</li> <li>• Using patriotic symbols or images of leaders from other countries</li> <li>• Using symbols, colours, slogans, marches, images or photographs of other political organizations or candidates</li> <li>• Using images of children or adolescents</li> <li>• Using images of the inauguration of public works, goods, services, programmes or projects</li> <li>• Using results and data from public opinion studies for electoral purposes</li> </ul>
Brazil	<ul style="list-style-type: none"> <li>• Provoking animosity among or against the armed forces and/or civil institutions</li> <li>• Employing any violent, subversive, racist or inflammatory nature</li> <li>• Offering or requesting money through gifts, raffles or drawings, or using material which can be confused with money</li> <li>• Violating legal norms on public health and urban aesthetics</li> <li>• Injuring, defaming or slandering any public person, body or entity</li> <li>• Degrading or ridiculing the candidates</li> <li>• Offending the honour of the candidates, public morality and decency</li> </ul>
Chile	--
Colombia	<ul style="list-style-type: none"> <li>• Using patriotic symbols, symbols of other political forces or those which generate confusion with other registered symbols</li> </ul>
Costa Rica	<ul style="list-style-type: none"> <li>• Using religious symbols or beliefs to support or separate a certain party or candidate</li> </ul>
Dominican Republic	<ul style="list-style-type: none"> <li>• Using phrases or concepts contrary to human decency, decorum or the dignity of political adversaries</li> </ul>
Ecuador	<ul style="list-style-type: none"> <li>• Discriminating against or affecting the dignity of individuals</li> <li>• Using symbols, expressions or references of a religious nature</li> </ul>
El Salvador	<ul style="list-style-type: none"> <li>• Advertisements prepared by any religious minister or active duty member of the armed forces</li> <li>• Undermining morality, decency and public order</li> <li>• Using symbols, colours, marches, images or photographs of other political organizations' candidates</li> </ul>
Guatemala	<ul style="list-style-type: none"> <li>• Offending morality or violation property rights or public order</li> </ul>
Honduras	<ul style="list-style-type: none"> <li>• Denigrating the citizenry, public institutions or other parties or candidates</li> <li>• Promoting abstention, violation of the law or disrespect for public institutions or the dignity of individuals</li> </ul>



### APPENDIX 3 (CONTINUED)

Mexico	<ul style="list-style-type: none"> <li>• Denigrating institutions or parties and slandering individuals</li> <li>• Using symbols, expressions, references or rationales of a religious nature</li> </ul>
Nicaragua	<ul style="list-style-type: none"> <li>• Damaging the integrity of the registered candidates</li> <li>• Calling for abstention or violence</li> <li>• Denigrating, offending or discrediting adversaries</li> </ul>
Panama	<ul style="list-style-type: none"> <li>• Using patriotic symbols, or those of the Electoral Tribunal or the General Electoral Prosecutor</li> <li>• Using symbols of a political organization, or images of a person without their authorization</li> <li>• Offending morality, and decency</li> </ul>
Paraguay	<ul style="list-style-type: none"> <li>• Performing injurious or denigrating personal references toward any citizen or implying attacks on public morality and decency</li> <li>• Making reference to nations, groups or institutions which may generate discrimination on the basis of race, sex or religion</li> <li>• Inciting war or violence</li> <li>• Discriminating on the basis of class, race, sex or religion</li> <li>• Inciting through animosity, emotion and passion the destruction of property or violating the physical integrity of individuals</li> <li>• Calling for collective disobedience to the laws, legal rulings or provisions adopted to safeguard public order</li> </ul>
Peru	<ul style="list-style-type: none"> <li>• Using or invoking religious topics of any creed</li> <li>• Undermining the law and public decency, or injuring the honour of parties or candidates</li> </ul>
Uruguay	<ul style="list-style-type: none"> <li>• --</li> </ul>
Venezuela	<ul style="list-style-type: none"> <li>• Undermining the honour, private life, privacy, image, confidentiality, and reputation of individuals</li> <li>• Promoting war, discrimination, or intolerance</li> <li>• Promoting disobedience to the laws</li> <li>• Discouraging the exercise of the right to vote</li> <li>• Including obscene or denigrating expressions against the bodies and entities of the government, institutions, and public servants</li> <li>• Using the image, sound, or presence of children and adolescents</li> <li>• Using national or regional patriotic symbols or those of the heroes of the Bolivarian Republic of Venezuela, or the colours of the national flag</li> <li>• Using the image or names of any citizen or the colours and symbols which identify a political organization or group of voters without their authorization</li> <li>• Violating the regulations set forth in laws on animal protection</li> <li>• Undermining the mental health of the citizenry</li> <li>• Promoting discriminatory stereotypes based on gender or of any other kind</li> </ul>





#### APPENDIX 4 SUMMARY OF PROHIBITIONS AND RESTRICTIONS

Country	Prohibitions Relating to the Use of Public Resources or Funds	Prohibitions or Restrictions Relating to the Dissemination of Media Publicity
Argentina		Publicity for acts of government: including elements which expressly encourage voting for any of the candidates
Bolivia	Using resources, funds and services of public institutions; making or ordering discounts in payroll for public servants to finance election advertising	For public national, departmental, regional or municipal entities: performing election advertising in electoral processes. For public servants: using resources, funds and services of public institutions in election publicity, both in public acts of campaigning and through paid messages in mass or interactive media outlets
Brazil	In election years, for the government: distributing goods, valuables or benefits, free of charge, except in the case of disasters or emergencies and of legally authorized programmes, as well as permitting the promotional use of the distribution of public goods and services.  In the three months prior to the election: making transfers of resources from the federal government to the states or municipalities	In the three months prior to the election: authorizing institutional publicity for acts, programmes, works or services
Chile		For public agencies of all kinds: incurring expenses for publicity and dissemination beyond those necessary to perform their functions or those which seek to inform users regarding how to access benefits



## APPENDIX 4

### SUMMARY OF PROHIBITIONS AND RESTRICTIONS

Prohibitions or Restrictions Relating to the Activities or Exercise of the Functions of Public Officials	Prohibitions Relating to the Performing of Acts of Government
	During the 15 days prior to primary and general elections: performing inaugurations for public works; launching or promoting collective plans, projects or programmes and, in general, any act of government which may encourage voting a certain way
For public servants: obstructing or impeding the completion of public acts of election campaigning of any political organization in public spaces; performing election campaigning, by any means, at public institutions	
For public servants and officials: a set of conducts which could affect the principle of equal opportunities among the candidates, such as: the transfer or use of movable and immovable property; the provision of services for campaign committees during working hours; and making pronouncements outside the free electoral allotments	In the three months prior to the election: hiring artistic performances for the conducting of inaugural acts. During the same period: the candidates cannot be present at the inauguration of public works
For public officials: performing political activities during working hours or using their authority, position or resources for purposes unrelated to the institution	





Colombia	<p>For authorities of public institutions at the various levels of government, during the four months prior to the election: authorizing the use of movables and immovables, property or goods of a public nature for proselytizing activities; celebrating inter-administrative agreements for the execution of public resources; participating in, promoting and allocating public resources of the entities under their charge or in which they participate as members of their executive boards, in or for gatherings of a proselytizing nature</p>	<p>For employees of the government: disseminating election publicity in favour of or against any party, group or political movement, through publications, official television and radio stations or the printed press, with the exception of that which is permitted by law</p>
Costa Rica		<p>Beginning the day after the call for elections and ending on election day, for the Executive, the decentralized administration, state companies and municipal authorities: publishing publicity information relating to public works, except technical or scientific information which is essential and urgent</p>
Dominican Republic	<p>For the employees or officials of the State and municipalities: offering parties or candidates any public funds or resources</p>	
Ecuador	<p>For public servants, entities and institutions: using public funds and resources to promote their names or their political organizations in the institutions, works or projects under their charge Requesting, at state institutions, mandatory contributions for political organizations or candidates</p>	<p>For state institutions, at all levels of government and during the entire campaign period: conducting advertising or publicity, and using their funds and resources for such purposes</p>



<p>For employees of the government: harassing, pressuring or in any way forcing subordinates to support a certain cause, campaign or political dispute; favouring with improper promotions, bonuses or raises those who are within the entity and under their charge, and who participate in the same cause or political campaign; offering any type of direct, specific, immediate and improper benefit to the citizenry or communities, through works or actions of the government, in order to influence their vote</p>	<p>For various authorities and officials from public institutions at the various levels of government, during the four months prior to the election: inaugurating public works or initiating social programmes at gatherings or events which include participation of candidates for the presidency and vice-presidency, Congress, departmental governorships, departmental assemblies, mayoral office and municipal or district councils or the representatives of these candidates</p>
<p>For public employees: working on projects or discussions of a political/electoral nature during working hours and using their position to benefit a certain party.</p> <p>For a long and detailed list of public authorities and officials: participating in the activities of political parties, attending clubs and meetings of a political nature, using the authority or influence of their charge to the benefit of political parties, placing signs on their homes or vehicles and making partisan displays of any other kind</p>	

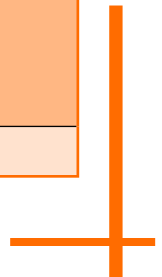




El Salvador	Using official national vehicles to conduct partisan activities	During the 30 days prior to the election, for the government of the Republic, the municipal councils and all other autonomous entities: publishing by any means the procurements, inaugurations of public infrastructural works or works of any other kinds which have been completed, are underway or are planned to be completed in performance of the provision of assistance services to which the government is obligated
Guatemala		During the electoral process: using resources and funds of the State for election publicity. For state officials, employees and contractors: reporting, disclosing or publicly inaugurating works performed in adherence to their duties and participating in any way in publicity or advertising in the activities, oversight or works performed
Honduras	Using resources of the State to create partisan advertising	Using radio and television broadcasters, newspapers and other media outlets of the state for election publicity purposes
Mexico	Using social programmes and their resources, at all levels of government, with the aim of encouraging or coercing the citizens to vote for or against any political party or candidate	During the federal election campaigns and until the conclusion of the elections: disseminating in the media any type of government advertising, with the exception of those relating to educational and health services, or those necessary for civil protection in cases of emergency
Nicaragua		Using resources of the State for political publicity purposes
Panama	Using the funds and resources of the State to the benefit or detriment of candidates or political parties, except when, in equal conditions, they are intended for legitimate electoral uses	For public institutions during the electoral process: presenting more advertisements or spots per day and per month than the average number that each institution has used during the six months prior to the process, to avoid oversaturation of state advertising and publicity
Paraguay		

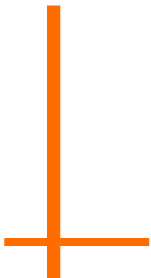


<p>For public officials and employees: using their position to conduct partisan politics</p>	
<p>For public officials and employees: using the working day to perform functions or activities of a political/electoral nature, as well as using their authority or influence for or against a specific candidate or political organization</p>	
<p>For public officials and employees: attending meetings of a political nature during working days and hours; using their authority, means or influences to favour certain people or political organizations</p>	<p>Using acts of government to create partisan publicity</p>
<p>For public servants: disseminating their annual progress reports or messages to promote their work during the election campaign period or for electoral purposes</p>	
<p>Conducting political proselytizing at public offices</p>	
<p>For public servants: performing publicity and partisan affiliation activities during their working hours or using the authority or influence of their positions to serve the interests of certain candidates in the election process or of the organizations which put said candidates forward; obstructing the free exercise of proselytizing or electoral activities, and using their authority to make their subordinates perform activities to the benefit or detriment of certain candidates or political parties</p>	





Peru		Beginning with the call for elections, for the government: implementing, through official publications or public or private TV stations or printed media, political publicity for the dissemination of information against any party, coalition or group. In addition, state publicity is suspended in any public or private media outlet, except in the case of urgent need or public benefit
Uruguay		
Venezuela	The use of national, state or municipal property is not permitted when intended to promote or favour a candidate or to create election publicity	For national, state and municipal governments, as well as public entities: creating publicity or advertising in favour or against any individual or organization with electoral purposes, and limiting it to strictly informative programmes, which include completed works for their proper use. For information relating to government works: including contents, publicity or advertising symbols of an electoral nature





For judicial magistrates, directors of autonomous entities and decentralized services, active military personnel and police officers: forming part of political commissions or clubs, signing party manifests and, in general, any public or private act of a political nature, except for voting	
Government employees and workers at all levels are required to maintain political impartiality in the exercise of their functions, and so they cannot abandon their normal working duties to participate in electoral activities of parties or candidates or display advertising at the facilities where they work. Public officials, especially high-level ones, are prohibited from performing any act of partisan publicity or advertising	





**APPENDIX 5**  
**PENALTIES APPLICABLE TO VIOLATIONS OF SPECIFIC REGULATIONS**

Country	Campaigning Before/After Campaign Periods	Purchase of Advertising	Publication of Surveys
Argentina	Fine of between 10,000 and 100,000 electoral modules for individuals; loss of public subsidy for between one and four years or as many as two election cycles for political organizations	Loss of public subsidy for between one and four years or as many as two election cycles for political organizations; fine, suspension of publicity or cancellation of the media outlet's licence	Fine of between ARS10,000 and ARS100,000 for individuals and legal entities
Bolivia	Fine imposed both on the media outlet and the political organization, valued at double the price; immediate suspension of advertising and disqualification of the media outlet for the next election cycle	Fine imposed both on the media outlet and the political organization, valued at double the highest recorded price, and disqualification of the media outlet for the next election cycle	None
Brazil	Fine of between BRL5000 and BRL25,000 or the amount equal to the cost of the advertising, if greater; BRL100 per electronic message	Fine of between 5000 and 25,000 UFIRs or the amount equal to the cost of the advertising, if greater	None
Chile	Expenses for early advertising are calculated to the limit	Fine of 20 to 100 monthly taxation units for the media outlet	Not applicable
Colombia	No express provision	No express provision	No express provision
Costa Rica	Fine of two to 10 wages for dissemination of publicity	Fine of 10 to 50 base wages for parties or natural or juridical persons	Fine of two to 10 base wages for the director of the media outlet





## APPENDIX 5

### PENALTIES APPLICABLE TO VIOLATIONS OF SPECIFIC REGULATIONS

Failure to Deliver Accounts in a Timely Manner	Exceeding of Expense Limits	Illegal Sources or Amounts
Daily fine equal to 0.2% of the corresponding public subsidy; after 90 days of delay, temporary suspension of the subsidy	Loss of public subsidy for between one and four years or as many as two election cycles for political organizations	Loss of public subsidy for between one and four years or as many as two election cycles for political organizations; fine equal and up to 10 times the value of the illegal contributions for the donor and for the treasurer of the party
Pending definition	Not applicable	Pending definition
Suspension of the public subsidy for between one and 12 months, and criminal liability which may result in the cancellation of registration	None	Fine equal to the amount in excess of the contribution; suspension of the public subsidy for up to two years and potential cancellation of registration; the receipt or use of illegal funds may result in loss of the elected position
Fine of between 100 and 300 monthly tax units	Fines imposed on the candidate, valued at twice the amount in excess if the limit is exceeded by less than 30%; triple if exceeded by between 30% and 50%; and quadruple if exceeded by more than 50%	Fines imposed on the candidate, valued at twice the amount in excess if the limit is exceeded by less than 30%; triple if exceeded by between 30% and 50%; and quadruple if exceeded by more than 50%
For serious violations: suspension or withholding of the public subsidy and/or of the free time slots in media outlets, and up to the suspension or cancellation of legal status	Loss of the elected position	For serious violations: suspension or withholding of the public subsidy and/or of the free time slots in media outlets, and up to the suspension or cancellation of legal status
Fine of two to 10 base wages for heads of finance	Not applicable	Fines for irregular contributions, but also providing for incarceration of two to six years for donors, fundraisers and treasurers



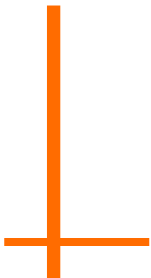
Dominican Republic	None	None	Not applicable
Ecuador	None	Fine of \$50,000 to \$100,000 and suspension of publicity	Fine of \$5000 to \$20,000 for the media outlet
El Salvador	Fine of between SVC10,000 and SVC50,000	Fine of SVC10,000 to SVC50,000 for media outlets and parties or organizations, or valued at 10 times the value charged by way of different rates; suspension or removal of the directors of public media outlets	Fine of between SVC10,000 and SVC50,000
Guatemala	No express provisions, though authorities are essentially permitted to impose fines	No express provisions, though authorities are essentially permitted to impose fines	No express provisions, though authorities are essentially permitted to impose fines
Honduras	Fine of 100 to 500 minimum wages for publicity, imposed on organizations and media outlets	Removal and fine of 20 to 100 minimum wages for directors of state media outlets	Fine of 200 to 1000 minimum wages for offenders
Mexico	The catalogue applicable to parties includes public reprimand, fines of up to 10,000 daily minimum wages, and reduction in the public subsidy; for candidates: reprimand and fines of up to 5000 minimum daily wages	The catalogue applicable to parties includes public reprimand, fines of up to 10,000 daily minimum wages, and reduction in the public subsidy; for radio and television licensees: public reprimand and fines of up to 100,000 minimum daily wages	The catalogue applicable to parties includes public reprimand, fines of up to 10,000 daily minimum wages, and reduction in the public subsidy; for radio and television licensees: public reprimand and fines of up to 100,000 minimum daily wages



None	Not applicable	Withholding of public subsidy for receiving prohibited contributions
Suspension of registration for one election cycle	Fine valued at double the amount in excess if the limit is not exceeded by more than 30%, or quadruple the amount if it does exceed 30%; the bank account can be ordered to be frozen	Fine for double or triple the excess amount for donors, candidates and parties; suspension of the political rights for the campaign treasurer for up to two years; loss of elected position in the case of illegal contributions received maliciously or for submission of falsified accounts
Fine of between 15 and 55 monthly minimum wages (failure to conduct formal accounting and violation of transparency obligations)	Not applicable	Fine of between 15 and 55 monthly minimum salaries
No express provisions, though authorities are essentially permitted to impose fines	No express provisions, though authorities are essentially permitted to impose fines	No express provisions, though authorities are essentially permitted to impose fines
None	Not applicable	Fine valued at double the amount of the illegal contribution
The catalogue applicable to parties includes public reprimand, fines of up to 10,000 daily minimum wages, and reduction in the public subsidy; for candidates: reprimand and fines of up to 5000 minimum daily wages	The catalogue applicable to parties includes public reprimand, fines of up to 10,000 daily minimum wages or in the amount of the excess expenditure, and reduction in the public subsidy; for candidates: reprimand and fines of up to 5000 minimum daily wages	The catalogue applicable to parties includes public reprimand, fines of up to 10,000 daily minimum wages or in the amount of the excess expenditure, and reduction in the public subsidy; for candidates: reprimand and fines of up to 5000 minimum daily wages



Nicaragua	None	None	Not applicable
Panama	Fine of PAB100 to PAB1000 for acts of publicity during the pre-election silence	Fine of PAB1000 to PAB5000 for media outlets	Fine of PAB5000 to PAB25,000 for media outlets and persons
Paraguay	Fine of 100 minimum daily wages for performing acts of publicity during the pre-election silence period	Fine of 1000 daily minimum wages for media outlets which adjust their prices	Fine of 500 minimum daily wages and incarceration for two to six months for directors of companies and media outlets
Peru	Incarceration for three months to two years for organizing or allowing acts outside the permitted periods	None	Fine of between 10 and 100 tax units
Uruguay	None	None	Not applicable
Venezuela	No express provision	Fine of 500 to 700 tax units for political organizations and candidates, or imprisonment of one day per penalty unit imposed	Fine of between 5000 and 7000 tax units





None	Not applicable	Fine valued at double the illegal contribution for parties and donors, and if the donor is an individual, their political rights are suspended for two to six years
None	Not applicable	Fine of PAB1000 to PAB25,000 for parties and candidates
Suspension of all public subsidies for up to three years or two election cycles	Loss of the right to receive public subsidy for three to five years or up to three election cycles and/or a fine equal to double the amount in excess	Fine equal to three times the illegal contributions to donors and parties, and loss of the party's right to up to 50% the public subsidy for one to three years
Loss of public subsidy for failure to submit an annual report	Not applicable	Fine 10 to 50 times the total amount for prohibited contributions and 10 to 30 times the total for individual contributions over the limit
Fine of 5000 indexed units per day of delay; if the fine is unpaid, the fine is withheld from the public subsidy	Not applicable	Fine valued at double the illegal contribution for parties, and between two and 10 times the value for donors
No express provision	Not applicable	No express provision





**ELECTORAL STUDIES  
IN COMPARED  
INTERNATIONAL PERSPECTIVE**

**Election Campaign Regulations in  
18 Latin American Countries**









*Empowered lives.  
Resilient nations.*