

# Unfair Advantage: The Abuse of State Resources in Elections

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## I. Introduction<sup>1</sup>

The misuse of state resources can be a major corruptive force in the electoral process, as it introduces or exacerbates power inequalities and gives unfair electoral advantage to incumbents. These abuses – previously defined as “the undue advantages obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, to influence the outcome of elections”<sup>2</sup> – can compromise the integrity of an election, and reduce public trust in the legitimacy of the process and its outcomes.<sup>3</sup> Abuses of state resources for the purpose of influencing the electoral process can drain limited funds available for development, infrastructure, or social welfare projects; conversely, these projects may be launched around the campaign period to influence voters rather than being initiated when they are needed.<sup>4</sup> The integrity of the private sector may be compromised as the government pressures companies for donations in exchange for continued business with the state.<sup>5</sup> The long-term harmful effects of the abuse of state resources on the rule of law are palpable when public employees, courts and security forces go above the law – either intentionally or under duress – to act in the interest of a ruling party rather than the country.<sup>6</sup>

This paper, which is part of a broader legal research project focused on addressing the use and misuse of state resources, seeks to contribute to an ongoing global conversation on this subject.<sup>7</sup> We are developing a globally comparative evaluation methodology, based on in-depth review of laws and regulations that address the abuse of state resources and the effectiveness of these provisions in deterring or remedying these abuses. The initiative focuses on the use of the legal and regulatory framework to prevent specific abuses related to a state’s *institutional* and *financial* resources (including restrictions on state personnel, official government communications to the public, and the use of state funds and physical assets). In the context of this larger study, this paper will identify examples of state

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<sup>1</sup> Text in this paper has been drawn from research provided by Matthew Sanderson, Bryson Morgan, and Jeremy Lagelee at the Caplin & Drysdale law firm in Washington, D.C. The authors would also like to acknowledge the contributions of Alissandra Young and Heather Szilagyi in providing research assistance for this article and Chad Vickery, Katherine Ellena and Staffan Darnolf for their review and suggestions.

<sup>2</sup> Org. for Sec. and Co-operation in Europe (OSCE)/ Office for Democratic Inst. and Human Rights (ODHIR), Handbook for the Observation of Campaign Finance 66 (2015).

<sup>3</sup> See Bruno Speck & Alessandra Fontana, “Milking the system”: Fighting the Abuse of Public Resources for Re-election 1 (CHR Michelsen Institute (CMI)/ U4, U4 Issue No. 7, 2011).

<sup>4</sup> See Int’l Found. for Electoral Sys. (IFES), Training in Detection and Enforcement (TIDE): Political Finance Oversight Handbook 135 (Magnus Ohman ed., 2013) [hereinafter TIDE].

<sup>5</sup> See Speck & Fontana, *supra* note 3, at 1.

<sup>6</sup> See TIDE, *supra* note 4, at 135.

<sup>7</sup> This research project seeks to address the abuse of state resources in elections. The global community is increasingly recognizing that such abuses confer clear benefits on incumbent politicians and parties and engender an unfair playing field that undermines electoral integrity. More broadly, they can erode the quality of democracy, the ability of state institutions to function, and the appropriate allocation of public resources. This research is being conducted in two phases: first, a comparative analysis of selected legal frameworks that regulate the use and abuse of state resources (including relevant enforcement mechanisms), and second, using findings from the first phase, development of an assessment methodology that measures the effectiveness of these legal structures in their country contexts, and produces specific recommendations for reforming or designing effective ASR frameworks and enforcement mechanisms. USAID funding supported the following areas of research in this paper: general literature review; in-depth analysis of Brazil, Georgia, and Sri Lanka; and illustrative examples from Ukraine, Mozambique, Nigeria, Kenya, Mongolia, Uganda, and Belarus. IFES funded all research regarding the United States legal framework governing the use of state resources.

interventions that have achieved some success in addressing this issue within their respective legal and regulatory frameworks, focusing on addressing specific abuses of institutional and financial resources.<sup>8</sup>

## II. Approach

In many countries, the abuse of state resources is not sufficiently regulated, or there are disparities between what is written in the law and what happens in practice.<sup>9</sup> These gaps leave the electoral system vulnerable to manipulation by those in positions of power.

Fortunately, international organizations, election monitors, implementers, and academics have recognized the pervasiveness of this issue. The Venice Commission and Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) have referred to the misuse of administrative resources during the electoral process as "one of the most important and recurrent challenges observed in Europe and beyond."<sup>10</sup> The Group of States Against Corruption (GRECO), International IDEA, and the Sunlight Foundation have specifically highlighted this issue as a major problem in Europe, Africa, and South Asia, respectively.<sup>11</sup> On the domestic front, many journalists, election management bodies (EMBs), and civil society organizations have also been vocal about the negative effects of the abuse of state resources in their respective countries.<sup>12</sup>

International organizations have taken several steps to begin to address this globally-pervasive issue. A recent example is the development and circulation of *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during the Electoral Process* by the Venice Commission and

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<sup>8</sup> The "state resources" concept can encompass a range of assets available to the state, including institutional, financial, regulatory, and enforcement resources. *Institutional resources* are defined as "non-monetary material and personnel resources available to the State, including publically-owned media and other communication tools." TIDE, *supra* note 4, at 132. *Financial resources* are defined as monetary assets, normally through the budget of various levels of government, as well as publically-owned and/or managed institutions." *Id.* *Regulatory resources* are defined as "the mandate to pass laws and regulations that control allowed and prohibited behavior in the polity; this regulatory prerogative regards anything from the criminal code to the order in which candidates should appear on the ballot paper." *Id.*

<sup>9</sup> This paper will use the term "misuse" and "abuse" (as they relate to the subject matter) interchangeably. It is understood that laws may seek to address these misuses/abuses through regulations that provide a list of acceptable uses; limit unacceptable uses; or some combination of both approaches.

<sup>10</sup> Venice Comm'n & OSCE/ODIHR, *Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources during Electoral Process*, 106th Sess., Doc No.778/2014, at ¶ 4 (2016) [hereinafter Venice Comm'n & OSCE/ODIHR, *Joint Guidelines*].

<sup>11</sup> See Int'l Inst. for Democracy and Electoral Assistance (IDEA), *Regional Studies on Political Finance: Regulatory Frameworks and Political Realities* 54 (2014); see also Nuruddin Ahmed, *How Dark Money is clouding South Asian Politics* (Sept. 17, 2015, 12:01 AM), <https://sunlightfoundation.com/blog/2015/09/17/how-dark-money-is-clouding-south-asian-politics/>; Group of States Against Corruption (GRECO), *Third Evaluation Round (launched in 2007): Evaluation and Compliance Reports*, Council of Europe, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp) (last visited June 30, 2016).

<sup>12</sup> In 2016 alone, there are many examples of these abuses: The Malawi Electoral Commission has gone on record documenting the abuse of state resources during Malawi's tripartite elections, noting that "Presidential campaign rallies could not be distinguished from presidential functions." Joseph Mtingwi, *Malawi: Abuse of State Resources, Challenge During Campaign Period-MEC*, Malawi News Agency (July 8, 2014), <http://allafrica.com/stories/201407081302.html>. A Romanian Member of Parliament was imprisoned this year after being found guilty for bribing the electorate with fried chicken he obtained from a local producer by abusing his "high position in local politics" in 2012. See Matthew Day, *Romanian MP Jailed for Bribing Voters with 60 Tonnes of Fried Chicken*, Telegraph (Mar. 16, 2016, 2:42 PM). The Namibian President has been accused of "using taxpayers' dollars for party political activities rather than government purposes" while campaigning for the 2016 elections. See *The Incumbency Advantage*, Election. Watch, <http://www.electionwatch.org.na/?q=node/347>.

OSCE/ODIHR, which are “aimed at assisting national lawmakers and other authorities in adopting laws and initiating concrete measures to prevent and act against the misuse of administrative resources during electoral processes.”<sup>13</sup> These guidelines identify foundational principles for developing a framework to prevent and respond to the abuse of state resources, as well as suggestions for the types of mechanisms that should be available in the legal framework (including sanctions and penalties). Other voices in the international community have also posited specific steps to combat the abuse of state resources and improve the credibility of the political process; for example, political scientists Bruno Speck and Alessandra Fontana have recommended more aggressive approaches by donors, such as the possibility of a withdrawal of support to known perpetrators, and building the capacity of civil society to monitor abuses in an effort to hold political actors accountable. They also recommend developing a framework that identifies how state resources are abused, assesses the costs associated with the abuse, and develops interventions based on identified priorities.<sup>14</sup>

Both GRECO’s third round evaluations as well as the Money, Politics and Transparency scorecards<sup>15</sup> have represented useful steps toward country-level identification of how state resources are abused. GRECO’s questionnaires on transparency of party funding<sup>16</sup> include several specific inquiries that relate to the abuse of state resources and available remedies. Similarly, Global Integrity’s Money, Politics and Transparency Indicators, which examine both *de jure* legal frameworks and *de facto* implementation, includes two questions (out of 50) specifically related to the abuse of state resources,<sup>17</sup> while several other lines of inquiry related to free or subsidized access to airtime for electoral campaigning indirectly address this issue. Civil society organizations, such as Transparency International Georgia, have also created methodologies for monitoring the abuse of state resources vis-à-vis the implementation of existing laws.<sup>18</sup>

In response to a clear need identified on the ground through assessments and in-country programming, IFES is developing a mode of analysis, based on in-depth review of laws and regulations that address the abuse of state resources and the effectiveness of these provisions in deterring or remedying these abuses. This approach focuses on the prevention of specific abuses related to a state’s *institutional* and *financial* resources (including restrictions on state personnel, official government communications to the public, and the use of state funds and physical assets).

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<sup>13</sup> Venice Comm’n & OSCE/ODIHR, Joint Guidelines, *supra* note 10, at ¶ 3.

<sup>14</sup> See Speck & Fontana, *supra* note 3, at v.

<sup>15</sup> A joint project by Global Integrity, The Electoral Integrity Project and the Sunlight Foundation “that provides a rich set of resources intended for stakeholders working to improve political finance systems in their own country, including in-depth research, analysis and case studies on political finance practices, global transparency principles for monitoring political finance and a link to a network of like-minded advocates.” Money, Politics & Transparency, <http://moneypoliticstransparency.org/> (last visited June 30, 2016).

<sup>16</sup> See GRECO, *Third Evaluation Round: Questionnaire on Transparency of Party Funding*, at 7, GRECO Eval III (2006) 2E, (Oct. 18, 2006), available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Greco%20Eval%20III%20\(2006\)%202E%20Questionnaire%20Party%20funding.PDF.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Greco%20Eval%20III%20(2006)%202E%20Questionnaire%20Party%20funding.PDF.pdf) (questions related to sanctions include 24-29).

<sup>17</sup> See *Direct and Indirect Public Funding*, Money, Politics, & Transparency, <https://data.moneypoliticstransparency.org/> (“Question 5: In law, use of state resources in favor of or against political parties and individual candidates is prohibited. Question 6: In practice, to what extent are no state resources used in favor or against political parties and individual candidates’ electoral campaigns?”) (last visited June 30, 2016).

<sup>18</sup> Includes analyzing local budgets to determine instances of ‘electorally motivated public spending,’ and monitor’s identification, investigation and verification of allegations related to misuse of coercive, legislative, institutional and financial resources. *e.g.*, *TI Georgia Releases a New Monitoring Report on the Misuse of Administrative Resources Ahead of 2013 Presidential Elections*, Transparency Int’l: Georgia (Oct. 24, 2013), <http://transparency.ge/en/post/report/ti-georgia-releases-new-monitoring-report-misuse-administrative-resources>

The authors' research and conclusions are predicated on several important principles recognized in international law and guidance offered by international and regional organizations. First, the legislative framework must establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections. It is essential for states to draft legislation that clearly defines the permissible uses of state resources as well as what constitutes an abuse. These provisions should clearly apply to both incumbent and opposition political forces, and regulations "should not favor or discriminate against any party or candidate."<sup>19</sup> The legal framework should include provisions requiring public employees to act in a neutral and impartial manner,<sup>20</sup> and make a "clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign."<sup>21</sup> The legal framework should also "provide for an equal right to stand for elections and for equality of opportunity to all candidates, including public employees, and political parties during electoral processes" while at the same time provide for a "clear separation between the exercise of politically sensitive public position and candidacy."<sup>22</sup>

Second, effective and transparent oversight by independent institutions is essential to address the abuse of state resources.<sup>23</sup> Institutions responsible for auditing the use of administrative should be granted the necessary authority and mandate to monitor parties and candidates, and must be equipped with the necessary human and financial resources to effectively carry out their mandate. Access to information is key in this regard. Magnus Ohman has highlighted the potential difficulty in oversight bodies being able to "resist pressure from the political power," stating that "efforts must be made to insulate the administration from the political government."<sup>24</sup> This could include including hiring and promotions being strictly based on merit, job security through tenure of oversight officials, and having "clear regulations on political involvement in administrative matter."<sup>25</sup> It is critical that any identified abuses of state resources be reported in a "timely, clear and comprehensive manner."<sup>26</sup>

Finally, appropriate remedies are vital for the effective contradiction of the abuse of state resources, in order to sanction state officials who violate the law. In a forthcoming American Bar Association publication on the subject, Chad Vickery and Katherine Ellena outline six core elements of effectiveness, including that a remedy: (1) ensures that the law in the books and their intent is realized in practice; (2) is provided in a timely manner; (3) is proportional to the violation or irregularity in question; (4) is enforceable; (5) leads to deterrence or the change in behavior intended; and (6) reinforces the perception of fairness.<sup>27</sup> The process for addressing violations should be transparent and accessible, with clear provisions outlined in the law, including which body has jurisdiction to handle the case and how it is appointed, and who has standing to register complaints or press charges.<sup>28</sup>

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<sup>19</sup> OSCE/ODIHR, *Election Observation Handbook* 18, 47 (5<sup>th</sup> ed., 2005).

<sup>20</sup> Venice Comm'n & OSCE/ODIHR, *Joint Guidelines*, *supra* note 10, at §§ A.3-A.4.

<sup>21</sup> *Id.* at § A.5.2.

<sup>22</sup> *Id.* at §§ A.3-A.5.

<sup>23</sup> The authors also note the importance of other entities, such as investigative journalists and civil society organizations, in monitoring potential abuse of state resources. However, this is not a focus of analysis for the purposes of this paper.

<sup>24</sup> TIDE, *supra* note 4, at 142-143.

<sup>25</sup> *Id.*

<sup>26</sup> Venice Comm'n & OSCE/ODIHR, *Joint Guidelines*, *supra* note 10, at § B. 1. 3.

<sup>27</sup> See Chad Vickery & Katherine Ellena, *Measuring Effective Remedies for Fraud & Administrative Malpractice*, in *International Election Remedies*, (American Bar Association (ABA), forthcoming 2016).

<sup>28</sup> See IFES, *International Standards, in Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (GUARDE) (Chad Vickery ed., 2011) [hereinafter IFES GUARDE].

In the development of a new mode of analysis on the abuse of state resources in elections, IFES is concentrating first on these areas of inquiry in relation to a state's institutional and financial resources. Although there are other issues that warrant examination – including political will and the oversight role played by civil society and other watchdog actors – these three areas (legal framework, independent oversight mechanisms, and effective remedies) provide a strong foundation for evaluating a state's ability to prevent the abuse of state resources.

Within this narrow focus, the authors are examining three specific categories of laws and regulations: 1) restrictions on state personnel; 2) restrictions on official government communications to the public; and 3) restrictions on the use of state funds and physical assets. This paper uses the comprehensive legal framework in the United States as a primary example of how these three types of restrictions can be addressed. It is worth noting at the outset that the purpose of this choice is not to indicate a general preference for the U.S. approach. Rather, with its decentralized election process, the U.S. offers a unique opportunity to examine the federal system, as well as a sampling of the various state-level legal and procedural approaches to preventing the misuse of state resources. Given that the U.S. has regulations in place that touch on each of the categories identified, an examination of this system provides a foundation for developing a comparative framework for analysis of legal systems globally.

### III. Legal Restrictions to Prevent the Abuse of State Resources

#### i. Restrictions on State Personnel

Within the overarching legal framework for elections, states should consider legal provisions placing some restrictions on the electoral activities of government personnel. These rules can range from general requirements of impartiality and neutrality to more specific regulations regarding “how and when campaigning in a personal capacity may be conducted,”<sup>29</sup> including whether individuals in certain positions must resign from their current posts before declaring candidacy for elected office.

#### Legal Requirements to Act Impartially

In a 2013 IFES publication, Ohman highlighted the importance of establishing regulations that “compel State agencies and public employees to act impartially.”<sup>30</sup> This view is echoed in the Venice Commission and OSCE/ODIHR's 2016 Guidelines, which provide that “[t]he legal framework should provide explicit requirements for public employees to act impartially during the whole electoral process while performing their official duties. Such regulations should establish the impartiality and professionalism of the civil service.”<sup>31</sup> Although Ohman acknowledges that these types of regulations are insufficient as a sole means of regulating the abuse of state resources, they can be beneficial in establishing a principle by which public employees must abide.<sup>32</sup>

Countries may use a variety of legislative and regulatory documents for this purpose, including the constitution as well as administrative and electoral codes. Relevant provisions may include legal requirements compelling state agencies and public employees to act impartially in all matters, or requirements to act impartially in relation to political parties, candidates, and election campaigns. The legislation might also demand political neutrality of institutions or institutional personnel key sections within the government structure, such as election management and law enforcement agencies.

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<sup>29</sup> Venice Comm'n & OSCE/ODIHR, Joint Guidelines, *supra* note 10, at § A. 4. 2.

<sup>30</sup> TIDE, *supra* note 4, at 138.

<sup>31</sup> Venice Comm'n & OSCE/ODIHR, Joint Guidelines, *supra* note 10, at § 3.

<sup>32</sup> See TIDE, *supra* note 4, at 138.



The U.S. federal system grants extensive powers to the state legislatures to enact laws and regulations in accordance with the Constitution; many states take advantage of this power to mandate that public employees must remain impartial.<sup>33</sup> On the national level, a vast legal framework governs the specific actions of officials and personnel, which serves the purpose of maintaining an impartial government (as discussed below).<sup>34</sup> Although the law does not provide a more general requirement for impartiality, the Supreme Court has noted that maintaining an impartial government is a fundamental principle (while not citing any specific legislative authority in making this assertion).<sup>35</sup> However, there is a general requirement within the Judicial Code of Conduct that the Judicial Branch, and the federal judges and magistrates therein must remain impartial.<sup>36</sup>

### **Restrictions on State Personnel Running as Candidates for Public Office**

It is also necessary to address the activities and responsibilities of public employees who are planning to run for office.<sup>37</sup> The Venice Commission and OSCE/ODIHR's 2016 Guidelines reference the need to consider "adequate and proportionate" rules in the legal framework pertaining to the "suspension from office or resignation of certain public authorities running for elections in order to ensure neutrality."<sup>38</sup> The Ukraine 2015 local election process illustrates these concerns. The OSCE/ODIHR election observation mission noted that government officials participated in the elections as both supporters and candidates. While it is common practice globally for incumbent candidates to campaign for re-election while in office, electioneering by these officials during official business hours raised concerns related to the misuse of state resources.<sup>39</sup> Both the Kenyan and Brazilian constitutions seek to address this issue. In Kenya, the constitution specifically prohibits parliamentary and presidential candidates from holding positions as public officers, members of the EMB, or members of the county assembly. Parliamentary, presidential, and county assembly candidates who have been found "in accordance with any law" to misuse or abuse their state office may also be disqualified.<sup>40</sup> Similarly, in Brazil, the constitution provides that if a President, Governor, or Mayor runs for another office, he or she must resign from the current office at least six months in advance of the election.<sup>41</sup> However, this provision does not appear to apply to sitting representatives or senators.

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<sup>33</sup> Examples include Alaska, Kentucky, and Nevada. *See, e.g.*, ALASKA STAT. ANN. § 24.60.010 (West); KY. REV. STAT. ANN. § 6.606 (West); NEV. REV. STAT. ANN. § 281A.020 (West).

<sup>34</sup> *See U.S. Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 564-65 (1973) (stating "a major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees, for example, not take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns, and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government").

<sup>35</sup> *See id.*

<sup>36</sup> *See Guide to Judiciary Policy*, Vol. 2A, Ch. 2, Canon 2 at 3 (Mar. 20, 2014) [hereinafter *Guide to Judiciary Policy*] ("A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge").

<sup>37</sup> *See TIDE, supra* note 4, at 140.

<sup>38</sup> Venice Comm'n & OSCE/ODIHR, JOINT GUIDELINES, *supra* note 10, at § A.4.2. However, Ohman warns that in some cases the implementation of such regulations could be counter-productive, if public employers are only willing to re-hire candidates that support the ruling party and refuse to re-hire representatives of the opposition. *See TIDE, supra* note 4, at 140.

<sup>39</sup> *See OSCE/ODIHR, Ukraine Local Elections 25 October and 15 November 2015: OSCE/ODIHR Election Observation Mission Final Report 15* (2016).

<sup>40</sup> *See Carter Cntr., Observing Kenya's March 2013 National Elections: Final Report 32, 36* (2013).

<sup>41</sup> *See Constituição Federal [C.F.] [Constitution] Oct. 5, 1988, art. 14, ¶ 6* (Braz.).

If candidates are permitted to maintain their public posts while running for office, there may be legal requirements for political parties and candidates to report on their finances – including donations and expenditures during the electoral period and outside of the electoral period – that could help facilitate the detection of abuses of administrative resources.

The U.S. legal framework places detailed restrictions on state personnel who are running as candidates for public office. U.S. federal law differentiates among public employees who are more or less restricted, based on the nature of the employing agency's mandate. Federal executive personnel are prohibited from running as candidates for public office in a partisan election.<sup>42</sup> Employees who work for certain federal agencies, including agencies whose responsibilities include election administration, law enforcement, and intelligence, are also restricted from running in a partisan election.<sup>43</sup> Federal judges are required to resign from judicial work if they are candidates in a primary or general election, regardless of whether the election is partisan.<sup>44</sup> Legislative personnel, on the other hand, such as Members of Congress, are permitted to run for re-election while serving in their roles.

Legal provisions for state-level officials vary: some states expressly guarantee that all government personnel have a right to seek public office as a political candidate;<sup>45</sup> some permit state employees to run as candidates but require those who are not already elected officials to take a leave of absence during their candidacies;<sup>46</sup> and in other states, civil service employees are strictly prohibited from running as a candidate in a partisan election, even during a period of absence from their government jobs.

*Excerpts from U.S. state law: Alaska*

(1) high moral and ethical standards among public employees in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest; [...]

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates"

*Alaska Stat. Ann. § 24.60.010 (West)*

### **Restrictions on State Personnel Contributing Resources to an Electoral Campaign**

Human resources are critically important for election campaigns. However, it is necessary to prevent incumbents from leveraging the considerable pool of government employees to gain an electoral advantage, and to conserve government work-time strictly for governance functions. In addition, regulations regarding state personnel's time and financial contributions to an electoral campaign can also serve to protect government employees from coercion with regard to their election activity.

Speck and Fontana highlight the summoning of public employees to participate in campaign rallies and the government declaration of a public holiday on the day the ruling party organizes a rally in town

<sup>42</sup> The Hatch Act, 5 U.S.C. § 7323(a)(2)-(3) (2012).

<sup>43</sup> *Id.*; see also 5 C.F.R. § 734.411(b) (2016).

<sup>44</sup> See *Guide to Judiciary Policy*, *supra* note 36, at Canon 5(A)-(C); see also Use of Electronic Social Media by Judges and Judicial Employees, 2014 WL 2625011, at \*5 (US Jud. Conf. Comm. Code Cond. Mar. 1, 2014).

<sup>45</sup> Examples include Connecticut and North Dakota. See, e.g., Conn. Gen. Stat. § 5-266a(b) (2005); N.D. Cen. Code § 44-08-19(1).

<sup>46</sup> Examples include Florida and Minnesota. See, e.g., Fla. Stat. § 110.233(4)(a) (2001); Minn. Stat. § 43A.32(2) (1994).

as two common ways that governments may utilize public employees for campaigning purposes.<sup>47</sup> For example, local NGOs reported that approximately 1,200 public employees were involved in campaigning in the August 2015 Sri Lankan parliamentary elections.<sup>48</sup> According to Transparency International Sri Lanka, the Program for Protection of Public Resources received 58 complaints of public employees participating in electioneering, including cases of executive-level officials supporting the ruling party.<sup>49</sup> Similar cases of abuse are common worldwide: the 2014 general elections in Mozambique saw the widespread availability of public resources to incumbent candidates, including the participation of public employees in campaign events during business hours.<sup>50</sup> In Kazakhstan's 2015 early presidential election, the OSCE/ODIHR Election Observation Mission noted that the presidential incumbent took advantage of his access to public employees during the campaign, and students and company employees reported "being instructed by supervisors to volunteer for the incumbent's campaign, attend campaign events held on his behalf, and vote for him."<sup>51</sup> More than 1,000 public employees engaged in campaigning, spending a collective total of 4,761 hours canvassing votes in Mongolia's 2004 electoral process.<sup>52</sup>

Regulations targeting abuses of the civil services can take several forms. Provisions in the legal framework may restrict public employees from contributing to election campaigns while on duty, or from participating in certain types of activities after hours (for example, making campaign speeches at partisan gatherings, or taking an active part in managing a political campaign or group). Finally, certain officials may be restricted from participating in electoral campaign activities, both on and off the job, based on their position. As stated by the Venice Commission and OSCE/ODHIR, "The non-involvement of judges, prosecutors, police, military and auditors of political competitors in their official capacity in electoral campaigning is of essential importance" in ensuring "official neutrality throughout the entire electoral processes."<sup>53</sup>

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<sup>47</sup> See Speck & Fontana, *supra* note 3, at 7.

<sup>48</sup> The violations occurred despite provisions in the Establishment Code of Sri Lanka and a circular issued by the Commissioner of Elections expressly prohibiting the participation of public officials in campaign activities. Chapter XXXII of the Establishment Code prevents public employees from engaging in activities related to political campaigns other than voting. Many public officials, including those like Secretaries to Ministries who hold executive positions, are entirely prohibited from campaign or election activity, while others, including clerical staff, may participate while off official duty.

See Transparency Int'l, *Electoral Integrity: A Review of the Abuse of State Resources and Selected Integrity Issues During 2015 Presidential Elections in Sri Lanka* 9 (2015) [hereinafter *Transparency Int'l, Sri Lanka Electoral Integrity Report*]; see also European Union Election Observation Mission (EU EOM), *Final Report: Democratic Socialist Republic of Sri Lanka, Parliamentary Elections 18-19* (2015).

<sup>49</sup> See Transparency Int'l, *Sri Lanka Electoral Integrity Report*, *supra* note 48, at 34-35.

<sup>50</sup> See EU EOM, *Mozambique: Final Report, General Elections 24* (2014). The EU EOM noted that this participation of public employees was enabled by the structure of the national administration and recommended that the broad legal framework be clarified: "Article 42 of the electoral law does not specify the scope of the general prohibition to use administrative resources and civil servants for campaigning purposes, which may be interpreted in a restrictive manner as to permit certain misuse of administrative human resources and others for the electoral campaign." *Id.* at 13.

<sup>51</sup> OSCE/ODIHR, *Republic of Kazakhstan Early Presidential Election 26 April 2015: Election Observation Mission Final Report 12* (2015).

<sup>52</sup> See Christian Schafferer, *The 2004 Parliamentary Election in Mongolia: Big Surprises and Small Victories*, 3 *J. Contemp. Eastern Asia* 1, 4 (2004).

<sup>53</sup> Venice Comm'n & OSCE/ODIHR, *Joint Guidelines*, *supra* note 10, at § A.4.3.



Equally as important is examining the law for *exemptions* to imposed restrictions for particular groups. These undue advantages can include exceptions for certain, specific groups – such as military personnel – or allowances for certain political activities, such as making monetary contributions. Cases in which the ruling party exerts control over the civil service create opportunities for abuse: observers during Nigeria’s 2015 general elections noted the misuse of both federal and state resources in violation of the party Code of Conduct, including the redirection of civil service salaries to election campaign activities.<sup>54</sup> Similarly, the continued employment of public employees in Bolivia allegedly depended on the reduction of their paychecks of anywhere from 5-50 percent in order to fund the 2009 election campaign of the President and Vice President.<sup>55</sup>

The law may also address permitted types of political participation for government employees, such as voting in elections, attending partisan and non-partisan political meetings, or signing petitions. The law should not seek, however, to entirely prohibit all activities relating to political participation of these individuals – in order to avoid undermining fundamental freedoms to vote and participate in public life, as, enshrined in international law<sup>56</sup> – that do not involve the use of administrative resources.

In the U.S., several forms of legislation, agency rules, ethics manuals, and codes of conduct address the various contributions of government employees to electoral campaigns. The Hatch Act<sup>57</sup> is the principal federal civil statute regulating campaign contributions of federal executive branch personnel, employees of the District of Columbia, and certain state personnel.<sup>58</sup> Additionally, there are several criminal federal statutes regulating state personnel political activities, the majority of which apply to more than just federal executive employees.<sup>59</sup> Moreover, Title 5 of the Code of Federal Regulations (CFR) contains the principal set of rules and regulations issued by federal agencies regarding administrative personnel.<sup>60</sup>

Although not regulated by the civil provisions of the Hatch Act, Members and employees of Congress are regulated by their respective ethics manuals,<sup>61</sup> which address political conduct.<sup>62</sup> Similarly, all federal judges and magistrates are regulated by the Code of Conduct for United States Judges, which is complemented by the Code of Conduct for Judicial Employees, as well as the Regulation on Gifts

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<sup>54</sup> EU EOM, Final Report: Federal Republic of Nigeria 20-21 (2015) [hereinafter EU EOM Nigeria Final Report].

<sup>55</sup> A bonus was later given to public employees as “compensation.” See TIDE, *supra* note 4, at 162.

<sup>56</sup> For example, Article 25 of the International Covenant on Civil and Political Rights. See International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>57</sup> 5 U.S.C. §§ 7321-7326 (2012).

<sup>58</sup> See Shannon Azzaro, *Hatch Act Modernization Act: Putting the Government Back in Politics*, 42 Fordham Urb. L.J. 781, 782 (2015).

<sup>59</sup> See, e.g., 18 U.S.C. A. §§ 602, 603, 606, 610. Note that §610 only applies to federal executive branch employees, and certain DC and state and local officials. See Craig C. Donsanto et al., *Federal Prosecution of Election Offenses*, 109-15 (7th ed., 2007).

<sup>60</sup> See, e.g., 5 C.F.R. §§ 734.101, 734.104, 734.201, 734.203(a), 734.204(b)-(f), 734.206(a)-(d), 734.208(a), 734.302(a), 734.303, 734.305(a)-(b), 734.401(b), 724.407, 724.409(a)-(d), 724.410, 724.411(a), 724.411(e), 724.412(b), 734.501, 734.502, 734.503.

<sup>61</sup> See *United States of America*, Money Politics & Transparency, <https://data.money politicstransparency.org/countries/US/> (last visited June 14, 2016). Both the House of Representatives and the Senate have their own ethics manuals.

<sup>62</sup> See H.R. Rep. Comm. On Standards of Official Conduct, 110<sup>th</sup> Cong., House Ethics Manual 123-24, 135-38, 150-51 (2008) [hereinafter House Ethics Manual]; see also S. Select Comm. On Ethics, Senate Ethics Manual, S. Pub. 108-1, at 139-41, 147-48 (1st Sess., 2003) [hereinafter Senate Ethics Manual].

and Outside Earned Income, Honoraria and Employment.<sup>63</sup> Moreover, military personnel are subject to regulation under Department of Defense Directives, which establish policies and assign responsibilities of personnel.<sup>64</sup>

The U.S. legislative framework applies certain specific on-the-job and off-the-job restrictions to state personnel, dependent upon the position held. Some on-the-job restrictions apply broadly to nearly all federal government personnel, with the intention of protecting the integrity of public employment, appropriations, and contracting decisions. Federal law forbids most federal executive branch officials<sup>65</sup> and all executive branch agency employees<sup>66</sup> from engaging in partisan electioneering,<sup>67</sup> or any activity directed toward the success or failure of a political party, candidate for partisan office or partisan political group<sup>68</sup> while on duty or at work. These on-the-job restrictions do not apply to some public employees – for example, some positions working in the Executive Office of the President – where election activity is a practical necessity for certain high-level federal officials – are allowed to engage in such activities.<sup>69</sup> Congressional staff are prohibited from soliciting contributions, completing Federal Election Commission reports, creating or distributing a campaign mailing, holding a campaign meeting, or drafting campaign speeches, statements, press releases, and literature while on-duty,<sup>70</sup> and may not use political considerations in executing their official responsibilities.<sup>71</sup>

Active-duty members of the U.S. military are somewhat unique among government employees in that they are considered to be “at work” even when they are away from a military facility. Given this, they are prohibited from active participation in partisan political fundraising activities, rallies, and debates,<sup>72</sup> or using their official authority or influence to affect the course or outcome of an election.<sup>73</sup> However, there are no restrictions on voting; making monetary contributions to a political organization, party or candidate; attending political rallies and meetings when not in uniform; or encouraging other military members to vote, assuming the advocacy is conducted in a non-partisan manner.

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<sup>63</sup> See *Ethics Policies*, UNITED STATES COURTS, available at <http://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies> (last visited July 1, 2016).

<sup>64</sup> See *What are the DoD Issuances?*, WASHINGTON HEADQUARTERS SERVICES, <http://biotech.law.lsu.edu/blaw/dodd/general.html> (last visited June 21, 2016); see e.g., Dept. of Def. Directive 1344.10 (February 19, 2008); Dept. of Def. Directive 1344.10 §§ 4.1.2.1., 4.1.2.2, 4.1.2.3, 4.1.2.5, 4.1.2.6, 4.1.2.8, 4.1.2.9, 4.1.2.10, 4.1.2.11, 4.1.2.13, 4.1.2.14, 4.1.2.15, 4.1.2.16., 4.1.3, 4.3.1.1, 4.3.1.2, 4.3.2.2, and 4.3.2.1.

<sup>65</sup> The President and Vice President are not covered by the Hatch Act’s prohibitions. See 5 U.S.C.A. § 7322(1).

<sup>66</sup> 39 U.S.C.A. § 410(b)(1) (2011). An individual who exercises governmental authority may be considered an employee of the federal government for Hatch Act purposes even if he does not receive compensation. See Off. Of Special Counsel, Adv. Op. 2010-02-19 (2012).

<sup>67</sup> See, e.g., 5 U.S.C.A. § 7324(a).

<sup>68</sup> 5 C.F.R. § 734.101 (2014).

<sup>69</sup> 5 U.S.C.A. § 7324(b); see, e.g., 5 C.F.R. §§ 734.104, 734.201, 734.401(b), 734.501, 734.503.

<sup>70</sup> See House Ethics Manual, *supra* note 62, at 124; see also Senate Ethics Manual, *supra* note 62, at 141 (noting a prohibition on campaign activities, such as “solicitation of political contributions, canvassing votes, organizing political fundraisers, and coordinating campaign volunteer lists”).

<sup>71</sup> See House Ethics Manual, *supra* note 62, at 150-151; see also S. Comm. On Rules and Admin., Standing Rules of the Senate, S. Doc. No. 113-18, at § 43(3) (2013) [hereinafter Senate Rules] (“The decision to provide assistance to petitioners may not be made on the basis of contributions or services, or promises of contributions or services, to the Member’s political campaigns or to other organizations in which the Member has a political, personal, or financial interest”).

<sup>72</sup> Dept. of Def. Directive 1344.10 § 4.1.2.1. Fundraising activities are particularly restricted. See, e.g., Dept. of Def. Directive 1344.10 §§ 4.1.2.9, 4.1.2.14, 4.1.2.16.

<sup>73</sup> Dept. of Def. Directive 1344.10 § 4.1.2.2.

Nearly all states in the U.S. prohibit the use of an official government position for a private purpose or for political gain. Most jurisdictions then supplement this broad and vague prohibition with a more specific admonition to government personnel to avoid election campaign activity while on duty and/or during government office hours.<sup>74</sup> State laws typically also prohibit government personnel from declaring or suggesting that an official act or a constituent service will be taken or withheld based on election-related considerations, including a person's decision to provide a political contribution or other donation.<sup>75</sup>

The U.S. legal framework also makes certain off-the-job restrictions to prevent the abuse of state resources. Federal personnel are prohibited at all times from using an official title or position while engaging in partisan election activity;<sup>76</sup> or soliciting, accepting, collecting, or receiving political contributions.<sup>77</sup> However, while off-the-job, there are no regulations prohibiting voting in elections;<sup>78</sup> assisting in registration drives or get-out-the vote efforts;<sup>79</sup> contributing financially to a campaign;<sup>80</sup> attending or actively participating in political campaigns or events;<sup>81</sup> acting as a poll worker;<sup>82</sup> or expressing opinions about political candidates and issues.<sup>83</sup> As with on-the-job restrictions, certain federal personnel are subject to more strict restrictions, prohibiting them from engaging in any political activity on behalf of a party, partisan group or candidate in a partisan election.<sup>84</sup>

Legislative personnel are generally permitted to engage in election activity when away from their government jobs. Members of Congress are obviously free to campaign for their own reelections while off-the-job and congressional staffers are able to use personal time to support political campaigns,<sup>85</sup> subject to certain caveats. For example, a congressional staffer who engages in election activity must do so voluntarily without any compulsion from any congressional Member or employee. Congressional offices are instructed to keep detailed time records and to distribute written employment policies that set forth official work hours to ensure staffers are not engaging in election activity during these periods.<sup>86</sup>

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<sup>74</sup> See, e.g., Ark. Code § 7-1-103(a)(2); Cal. Gov't Code §§ 3207, 8314; Colo. Stat. § 24-50-132; Conn. Gen. Stat. § 5-266a(b); 29 Del Code. § 5954(b); D.C. Code § 1-1171.03(a); Fla Stat. §§ 104.31(2), 110.233(4)-(5); Ill. Comp. Stat. § 430/5-15(a).

<sup>75</sup> See, e.g., Miss. Code. § 23-15-873; Mo. Stat. § 105.452(1); N.Y. Elec. L. § 17-154(2)-(3); N.D. Cen. Code § 44-08-19(1); 65 Penn. Comp. Stat. § 1103; R.I. Gen. L. § 36-14-5(a)(i); Tenn. Code §§ 2-19-204, 2-19-205; Utah Code § 67-19-19(2)(b); Wisc. Stat. § 12.08.

<sup>76</sup> 5 C.F.R. § 734.302(a).

<sup>77</sup> 5 C.F.R. § 734.303; see also *Special Counsel v. Casey*, No. CB-1216-10-0011-T-1, 2011 WL 12506611, at \*2 (M.S.P.B. May 31, 2011) (applying prohibition on hosting a fundraiser).

<sup>78</sup> 5 C.F.R. § 734.206(a).

<sup>79</sup> 5 C.F.R. § 734.206(d).

<sup>80</sup> 5 C.F.R. § 734.208(a).

<sup>81</sup> 5 C.F.R. § 734.204(b)-(f).

<sup>82</sup> 5 C.F.R. § 734.206(b)-(c).

<sup>83</sup> 5 C.F.R. § 734.203(a).

<sup>84</sup> *Hatch Act FAQs*, Office of Special Counsel, <https://osc.gov/Pages/HatchAct-FAQs.aspx#> (last visited Jul. 1, 2016); see also 5 C.F.R. § 734.408 (“[a]n employee covered under this subpart may not take an active part in political management or in a political campaign. . .”).

<sup>85</sup> See House Ethics Manual, *supra* note 62, at 135; see also Senate Ethics Manual, *supra* note 62, at 139.

<sup>86</sup> See, e.g., House Ethics Manual, *supra* note 62, at 136-37; U.S. House of Reps. Comm. on Ethics, 113<sup>th</sup> Cong., Campaign Activity Guidance 8 (2014) [hereinafter House Campaign Activity Guidance], available at <http://ethics.house.gov/sites/ethics.house.gov/files/20140815%20Pink%20Sheet.pdf>. Because official work hours are designated by each office's personnel policies, what constitutes as official work hours will vary. Any time that is designated as personal time by these policies (e.g., lunch hours, annual leave, time after the end of the business day or weekends) are not official work hours, and may be used for campaign activity that is in compliance with other restrictions. Moreover, while these time records are not mandatory, the ethics committees strongly encourage employees to keep them in order to use as evidence in defense of a challenge or investigation by an employer or the ethics committee for violating these restrictions. *Id.*

Additionally, congressional staffers are always prohibited from making a political contribution to his or her employing Member, even if the staffer would contribute outside of work and even if it is clear from circumstances that the staffer is contributing in an entirely voluntary fashion.<sup>87</sup>

Federal judges and judicial officers must refrain from engaging in any election activity altogether.<sup>88</sup> The Code of Conduct stipulates broadly that federal judges should not engage in any “political activity,” except for incidental activities that might arise from their involvement in a law school board or charitable organization.<sup>89</sup>

## ii. Restrictions on Use of State Physical Resources and State Funds

Unless regulated, a state’s physical resources and state funds may be subject to abuse by government officials and their respective political parties for electoral gain. The authors are using the term “physical resources” to refer to the material assets of the government, including, but not limited to, buildings, equipment and vehicles. For the purposes of this analysis, “state funds” refer to a state’s monetary assets allocated for operations and administration (for example, official travel expenses of state officials). Provisions in the legal framework can serve to limit potential abuses by clearly identifying inappropriate uses of these resources and requiring transparency in the use of these resources throughout the electoral process.

### Restrictions on Usage of State Physical Resources

Countries could consider banning the use of the government’s physical resources in election campaigns, or restricting use to only those resources that can be procured without additional cost to the government. If use of the government’s physical resources is permitted for campaigning purposes, “the legal framework should provide for equal opportunity and a clear procedure for equitably allocating such resources to parties and candidates.”<sup>90</sup> For example, elected officials may be allowed to use government vehicles for election activity if the government is fully reimbursed for this use by the candidate’s campaign coffers. Alternatively, allowing “generalized access” of the state’s physical resources equitably to *all* political parties is also an option, such as “allowing use of public buildings for party conventions [and] use of a certain number of vehicles during the campaign period.”<sup>91</sup> This alternative is used in Brazil, where registered political parties are allowed free access to public schools or legislative houses for conventions or meetings, provided the party takes responsibility for any damages that may result.<sup>92</sup>

As highlighted by Speck and Fontana, the public is often aware of abuses such as the unauthorized use of government vehicles and public buildings as they are relatively easy to detect and are often highlighted by election observation missions and the media.<sup>93</sup> Sri Lanka is one country where this issue is particularly acute and visible: for example, during the 2015 electoral process, the Program for Protection of Public Resources documented more than 2,400 buses owned and operated by the Sri Lanka Transport Board transporting members of the public to campaign events for the incumbent President, in violation of constitutional provisions and EMB directives.<sup>94</sup> Observers from the European Union Election Observation

<sup>87</sup> 18 U.S.C. § 603; *see also* HOUSE ETHICS MANUAL, *supra* note 62, at 137-38; SENATE ETHICS MANUAL, *supra* note 62, at 147.

<sup>88</sup> *See Guide to Judiciary Policy*, *supra* note 36, at Canon 5.

<sup>89</sup> *See id.* at Canon 4.

<sup>90</sup> Venice Comm’n & OSCE/ODIHR, Joint Guidelines, *supra* note 10, at § B.1.6.

<sup>91</sup> Speck & Fontana, *supra* note 3, at 10-11.

<sup>92</sup> *See* Law on Political Parties (Law No. 9,096/1995), art. 51 (Braz.).

<sup>93</sup> *See* Speck & Fontana, *supra* note 3, at 3-4.

<sup>94</sup> *See* Transparency Int’l, Sri Lanka Electoral Integrity Report, *supra* note 48, at 20-22b.

Mission in Nigeria similarly witnessed the use of state vehicles and office space for “campaign activities” in nine Nigerian states.<sup>95</sup>

U.S. federal law and congressional rules strictly prohibit the use of government resources, including congressional facilities, travel, goods, and services paid for with government funds, for campaigns or political purposes.<sup>96</sup> These restrictions prohibit the use of official resources for *any* partisan election activity, not just activity benefiting the violator’s or his/her employer’s campaign.<sup>97</sup> For example, all federal executive branch officials and employees are prohibited from engaging in election activity while in a government building used for official duties, or while using federal government owned or leased vehicle.<sup>98</sup> Additionally, the law prevents anyone from soliciting or receiving campaign contributions in a room or building occupied in the discharge of official duties.<sup>99</sup>

Rules and guidance issued by the United States House of Representative and United States Senate also prohibit the misuse of official funds for campaign or political purposes, and contain detailed provisions on the application of this prohibition to various types of government resources.<sup>100</sup> For example, House and Senate Ethics manuals clearly state that Congressional facilities may not be used to hold campaign or political meetings, solicit or make campaign contributions, place campaign phone calls, issue campaign speeches, statements or press releases, or to conduct campaign-related media appearances or photo shoots.<sup>101</sup> Congressional equipment and supplies also may not be used for campaign or political purposes. This ban also extends to official files, photos, videos, mailing lists, as well as writing and research produced by congressional staff.<sup>102</sup> Official computers, stationary, telephones, computers, copiers, fax machines, websites, and email accounts also may not be used for campaign or political purposes.<sup>103</sup> Vehicles paid for with official funds – through lease or mileage reimbursement—may not be used for campaign or political purposes unless such costs are reimbursed to the congressional office.<sup>104</sup>

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<sup>95</sup> See EU EOM Nigeria Final Report, *supra* note 54, at 20.

<sup>96</sup> See 5 U.S.C.A. § 7324; see also House Ethics Manual, *supra* note 62, at 121-84, 323-33; U.S. House of Reps. Comm. on House Admin., 114<sup>th</sup> Cong., Members’ Congressional Handbook (2015) [hereinafter Members’ Congressional Handbook], available at [http://cha.house.gov/sites/republicans.cha.house.gov/files/documents/Members%20Handbook%20114th\\_Adopted102715.pdf](http://cha.house.gov/sites/republicans.cha.house.gov/files/documents/Members%20Handbook%20114th_Adopted102715.pdf); Senate Ethics Manual, *supra* note 62, at 139-58; *Campaign Activity*, U.S. Senate Select Committee Ethics, <http://www.ethics.senate.gov/public/index.cfm?p=campaign-activity/> (last visited Jul. 1, 2016); U.S. Senate Comm. on Rules and Admin., Senate Manual (2014) [hereinafter Senate Manual].

<sup>97</sup> See House Ethics Manual, *supra* note 62, at 124-25; see also Senate Ethics Manual, *supra* note 62, at 139-58.

<sup>98</sup> 5 U.S.C. § 7324(a)(3)-(4); see also Off. Of Special Counsel Adv. Op. 2007-01-29 (stating that the prohibition on driving personal vehicle while engaged in election activity must cover a bumper sticker if it is being used for official purposes).

<sup>99</sup> 18 U.S.C. § 607 (2002) (prohibiting the receipt of campaign contributions in a room or building occupied in the discharge of official duties, with limited exceptions for misdirected contributions).

<sup>100</sup> See House Ethics Manual, *supra* note 62, at 121-84, 323-33; see also Senate Ethics Manual, *supra* note 62, at 139-58.

<sup>101</sup> See House Ethics Manual, *supra* note 62, at 149; see also Senate Ethics Manual, *supra* note 62, at 139-58.

<sup>102</sup> See House Ethics Manual, *supra* note 62, at 128; Members’ Congressional Handbook, *supra* note 96, at 12-22; Senate Ethics Manual, *supra* note 62, at 153-54.

<sup>103</sup> See House Ethics Manual, *supra* note 62, at 128-31; Members’ Congressional Handbook, *supra* note 96, at 12-22; U.S. House of Reps. Comm. on House Admin., 114<sup>th</sup> Cong., Committees’ Congressional Handbook (2016) [hereinafter Committees’ Congressional Handbook], available at <http://cha.house.gov/handbooks/committee-handbook>; Senate Rules, *supra* note 71, at § 40.5; Senate Ethics Manual, *supra* note 62, at 140, 146.

<sup>104</sup> See Members’ Congressional Handbook, *supra* note 96, at 31; see also Senate Manual, *supra* note 96, at § 1160.



U.S. state governments may issue rules intended to prevent their physical resources and other property from being used in a manner that could influence an election. Many states strictly ban any use of state equipment, facilities, materials, vehicles, supplies, or other public property for partisan election activity.<sup>105</sup> States tailor their restrictions and related exemptions in a manner that best suits their respective preferences, contexts, and policy concerns.

### Restrictions on Usage of State Funds

It is important for legal frameworks to prevent incumbents' abuse of state funding for electoral purposes, and to provide equal access to any state funding for all political parties and/or candidates.<sup>106</sup> There are a variety of approaches states can take to regulate the use of state funds. Ohman raises the option of banning the use of certain funds in election campaigns; for example, in Poland, the law prevents campaign expenditures from being paid for using national or local government budgets.<sup>107</sup> States may opt to ban public agencies from providing funds to political parties or candidates. Political parties and candidates may also be required to provide information on their personal and election-related expenses to identify instances where administrative resources have been abused. Approximately two-thirds of all countries have reporting requirements in their legal and regulatory framework for political parties, while approximately half have the same requirements for candidates.<sup>108</sup>

Speck and Fontana highlight several ways that state funds can be abused for campaigns, which can range from direct theft of government funds, providing subsidies to nonprofit organizations which then send funds to political parties, or negotiating contracts to private companies at inflated rates and having excess funds diverted back to the government party.<sup>109</sup> Transparency International Sri Lanka lamented that state funds were used to enable an unprecedented level of vote buying and bribery during the 2015 presidential elections. A wide variety of items from clothing to mobile phones were purchased with government funds and effectively distributed as bribes.<sup>110</sup> The ruling National Resistance Movement in Uganda also took advantage of its incumbent position to access a variety of state funds and other resources for use in the 2016 election campaign. For example, the European Union Election Observation Mission reported: "The state budget covered [the President's] travel and accommodation costs on the campaign trail."<sup>111</sup>

In the U.S., a federal statute generally prohibits the use of appropriated funds for anything other than their intended purpose.<sup>112</sup> The rules and guidance issued by the United States House of Representatives and Senate prohibiting the misuse of official funds for campaign or political purposes, and the detailed

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<sup>105</sup> See, e.g., Ala. Code § 36-25-5(d); Ariz. Rev. Stat. § 16-192(A); Colo. Stat. § 24-50-132; Conn. Gen. Stat. § 5-266a(b); D.C. Muni. Regs. §§ 1800.3(i), 1808.1; Ga. Code § 21-5-30.2; Ill. Comp. Stat. § 430/5-15(a); Ind. Code § 4-2-6-17(a); Iowa Code § 68A.505; Kan. Stat. § 25-4169a(a)(1); 3 Me. Rev. Stat. §170-A; Mich. Comp. L. § 15.342(3); Minn. Stat. §16A.139(a); Mo. Stat. § 36.157; N.M. Stat. § 10-16-3.1(C); Okla. Ethics Comm'n R. 2.3-2.8 (2015), available at [https://www.ok.gov/ethics/Ethics\\_Laws,\\_Guides\\_&\\_Forms/index.html](https://www.ok.gov/ethics/Ethics_Laws,_Guides_&_Forms/index.html); S.C. Stat. § 8-13-765; Tenn. Code § 2-19-202(a); Tex. Gov't Code § 556.004(a); Utah Code § 76-8-402(1); Vt. Personnel and Procedures Manual at 5.7(1) (2015), available at <http://humanresources.vermont.gov/labor-relations/manual>; Wash. Rev. Code §§ 42.17A.555, 42.52.180.

<sup>106</sup> ACE: The Electoral Knowledge Network, The ACE Encyclopaedia: Parties and Candidates 23 (2013).

<sup>107</sup> See TIDE, *supra* note 4, at 138-39 (discussing Article 86 of the Polish Presidential Election Law).

<sup>108</sup> *Id.* at 142.

<sup>109</sup> See Speck & Fontana, *supra* note 3, at 4-5.

<sup>110</sup> See Transparency Int'l, Sri Lanka Electoral Integrity Report, *supra* note 48, at 22-26.

<sup>111</sup> EU EOM, Final Report: Uganda Presidential, Parliamentary and Local Council Elections 17 (2016) [hereinafter EU EOM Uganda Final Report].

<sup>112</sup> 31 U.S.C.A. § 1301 (1982).

provisions on the application of this prohibition to various types of government resources, are the implementing measures of the appropriations statute within Congress.<sup>113</sup>

The prohibition against using official resources for campaign or political purposes extends to the following: funds supporting congressional administrative offices and congressional committees; funds allotted to each Member for the operation of their personal congressional office;<sup>114</sup> and goods and services, including staff time and equipment, purchased or leased with official funds.<sup>115</sup> There are also specific regulations prohibiting congressional funds from being used for campaign or political travel.<sup>116</sup> Senators and their legislative staff are prohibited from receiving reimbursement or payment for official travel (other than actual transportation costs) occurring within 60 days of the senator's election.<sup>117</sup>

### iii. Restrictions on Official Government Communications to the Public

In order to conserve tax dollars for governance functions,<sup>118</sup> maintain the credibility of government communications,<sup>119</sup> and prevent an incumbent from abusing the government's communication resources to gain an electoral advantage,<sup>120</sup> it is important for the legal and regulatory framework to provide guidance on allowable and unallowable uses of official government communications during the electoral period.<sup>121</sup>

Inequitable access to government channels of communication for electoral campaigning can tilt the playing field heavily in the direction of the incumbent party. For example, Uganda's ruling National

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<sup>113</sup> See House Ethics Manual, *supra* note 62, at 121-84, 323-33; see also Senate Ethics Manual, *supra* note 62, at 139-58; *General Prohibition Against using Official Resources for Campaign or Political Purposes*, Committee Ethics, [hereinafter *General Prohibition Against using Official Resources*] <http://ethics.house.gov/general-prohibition-against-using-official-resources-campaign-or-political-purposes> (last visited Jul. 1, 2016).

<sup>114</sup> See House Ethics Manual, *supra* note 62, at 123-25; see also Members' Congressional Handbook, *supra* note 96, at 1-2; Senate Manual, *supra* note 96, at §§ 106-107.

<sup>115</sup> See House Ethics Manual, *supra* note 62, at 123; see also Senate Manual, *supra* note 96, at §§ 993-994.

<sup>116</sup> See House Ethics Manual, *supra* note 62, at 116, 131; see also Members' Congressional Handbook, *supra* note 96, at 29; Committees' Congressional Handbook, *supra* note 103.

<sup>117</sup> See Senate Manual, *supra* note 96, at § 994(e).

<sup>118</sup> See, e.g., *Ex parte Curtis*, 106 U.S. 371, 373, 1 S. Ct. 381, 384, 27 L. Ed. 232 (1882) (stating that federal restrictions on the abuse of state resources were intended to "promote efficiency and integrity in the discharge of official duties"); Eleanor Smith & Leslie B. Kiernan, *The Civil Hatch Act and Post-Government Employment Restrictions*, Political Activity, Lobbying Laws & Gift Rules Guide, 3d § 19:6 (describing "efficiency" as a purpose for federal restrictions on using government resources for electoral purposes).

<sup>119</sup> See, e.g., 39 U.S.C. § 3210(a)(5)(A) (providing that official federal legislative communications may not be used "to solicit political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office"); Or. Rev. Stat. § 244.010 ("[t]he Legislative Assembly declares that service as a public official is a public trust and that, as one safeguard for that trust, the people require all public officials to comply with the applicable provisions of this chapter").

<sup>120</sup> See, e.g., *U. S. Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. at 564-67 (1973) (stating that a purpose of federal restrictions on electoral use of government resources was to prevent the conversion of public service into "a powerful, invincible, and perhaps corrupt political machine"); *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983) (finding that federal restrictions reflect "the basic principle that government funds should not be spent to help incumbents gain reelection").

<sup>121</sup> This paper does not address restrictions placed on publicly-owned media, given the differences between funding sources and the types of content broadcasted by public television and radio outlets. Public media may have a much greater impact on the electoral process in many countries around the world where there are limited sources of information and, therefore, may require that they are governed by a more extensive regulatory framework than privately held media outlets. The topic will be explored further in IFES' larger research project on this subject.

Resistance Movement (NRM) received a great deal more paid advertising than all other candidates – much of it paid for by ministries and government agencies – in both television and print media during the 2016 elections.<sup>122</sup> During the 2015 elections in Sri Lanka, Transparency International Sri Lanka (TISL) reported that government institutions published advertisements in widely-distributed newspapers supporting the incumbent presidential candidate.<sup>123</sup>

There are various ways the legal and regulatory framework can prevent this potential abuse. Legal provisions may restrict the advertising the activities of state agencies during the campaign period. Countries may also include provisions in the legal framework placing restrictions on the use of government funds to print or distribute communication during the electoral campaign period; for example, prohibiting mass mailings paid with official government funds or official publications that “prominently feature” a public official from being sent during the 30 days before an election. Additionally, legal provisions may include *content* restrictions (such as on the use of official symbols or other government insignia in election-related communication).

In the U.S., several tools regulate government communications. The U.S. Office of Management and Budget (OMB), a department of the Executive Office of the President, has issued several general policy documents that govern the dissemination of information by federal agencies.<sup>124</sup> Federal agencies, in implementing their own information policies pursuant to OMB guidelines, have interpreted this general guidance as preventing the direct dissemination of partisan election information.<sup>125</sup> These policy documents – coupled with the Hatch Act, which inherently restricts political communication by limiting any executive branch employee political activity while on the job<sup>126</sup> – effectively govern communications relating to the election process within the executive branch.

*Excerpts from U.S. state law: Kentucky*

(6) Use his official legislative stationery, or a facsimile thereof, to solicit a vote or a contribution for his or another person’s campaign for election or reelection to public office, or use the great seal of the Commonwealth on his campaign stationery or campaign literature. For purposes of this subsection, “official legislative stationery” means the stationery used by a legislator on a day-to-day basis for correspondence related to his duties as a member of the General Assembly. Violation of this subsection is ethical misconduct.

*KY. REV. STAT. ANN. § 6.731 General standards of conduct; penalties*

The federal government and state governments impose certain timing restrictions on their legislative branch communications to the public to prevent them from being used to influence elections or from being perceived by the public as serving that purpose.

<sup>122</sup> See EU EOM Uganda Final Report, *supra* note 111, at 19.

<sup>123</sup> See Transparency Int’l, Sri Lanka Electoral Integrity Report, *supra* note 48, at 29.

<sup>124</sup> See, e.g., Off. of Mgmt. and Budget, *Circular No A-130 Revised* (2000), available at [https://www.whitehouse.gov/omb/circulars\\_a130\\_a130trans4/](https://www.whitehouse.gov/omb/circulars_a130_a130trans4/).

<sup>125</sup> See U.S. Dept. of Commerce, *Policy on the Approval and Use of Social Media and Web 2.0* (2010), available at [http://ocio.os.doc.gov/ITPolicyandPrograms/Policy\\_Standards/PROD01\\_009476](http://ocio.os.doc.gov/ITPolicyandPrograms/Policy_Standards/PROD01_009476); see also U.S. Dept. of the Interior, *Social Media Policy* (2015), available at <https://www.doi.gov/notices/social-media-policy>; Dept. of Def., *Use of Government Resources* at 7 (2013), available at [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/government\\_resources.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/government_resources.pdf); Dept. of Def., *Ethics Counselor’s Deskbook, Use of Government Resources* at 8 (2013), [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/government\\_resources.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/government_resources.pdf); U.S. Dept. of Labor, *External Linking Policy*, 7(d) (2015), available at <http://www.dol.gov/dol/aboutdol/external-policies.htm>.

<sup>126</sup> 5 U.S.C.A. § 7324.



For example, for “franked” communication<sup>127</sup> – which cannot be used to advance electoral purposes – federal law and congressional rules prohibits mass mailings from being sent within 60 days of a Senator’s primary or general election or nominating convention to any public office, or within 60 days of a biennial federal general election.<sup>128</sup> House Members may not send unsolicited mass mailings within 90 days of a Member’s primary or general election to any public office.<sup>129</sup> The same moratoria also applies to House and Senate mass email communications.<sup>130</sup>

State governments in the U.S. may impose special restrictions or moratoria on official communications that are to be distributed to the public near the time of an election. Alaskan law, for example, says that a state legislator may not use state funds to print or distribute any communication “from or about” any person who is a candidate for federal, state, or local office within 60 days before an election.<sup>131</sup> Nevada law imposes what is perhaps the longest moratorium by prohibiting the use of public funds for certain advertisements at any time after the candidate files a declaration of candidacy.<sup>132</sup>

U.S. federal government and state governments also impose content restrictions on official proceedings and communications to the public to prevent their influence on the elections. Because federal law already bars executive branch employees from engaging in partisan election activity on the job, which would itself cover an agency employee’s posting of partisan election information on an agency website, information policies are principally focused on agencies’ linking to third-party content that could possibly be of a partisan nature.<sup>133</sup>

*Excerpts from U.S. state law: New York*

2. ... (a) no elected government official or candidate for elected local, state or federal office shall knowingly appear in any advertisement or promotion, including public or community service announcements, published or broadcast through any print or electronic media (including television, radio and internet) by any private or commercial entity or any other entity that publishes such advertisement for a fee, if the advertisement or promotion is paid for or produced in whole or in part with funds of the state, a political subdivision thereof or a public authority.

*Public Officers Law §73-b. Advertisements by elected government officials and candidates made with public funds; prohibited*

<sup>127</sup> Federal law grants Members of the House of Representatives and United States Senators the privilege to send mail at taxpayers’ expense, provided that the mail solely pertains to the “official business, activities, and duties” of Congress; this privilege is known as the “frank” and it facilitates communication between Members of the House and Senate with each other, with federal and state government agencies, and with constituents. *See* 39 U.S.C. § 3210 (2006).

<sup>128</sup> 39 U.S.C. § 3210(a)(6)(C); *see also* U.S. Senate Select Comm. on Ethics, Regulations Governing the use of the Mailing Frank by Members and Officers of The United States Senate 14-15 (2008) [hereinafter Senate Franking Regulations].

<sup>129</sup> 39 U.S.C. § 3210(a)(6)(A). House Members may consider an individual who subscribed to a Member’s electronic communication or newsletter to be soliciting a response by his or her office. As a result, a communication to that individual would not be subject to the 90-day communications ban that applies to unsolicited communications. *See* House Ethics Manual, *supra* note 62, at 130.

<sup>130</sup> *See Franking FAQ*, Committee House Admin., <https://cha.house.gov/franking-commission/franking-faq> (last visited Jul. 1, 2016); *see also* Senate Ethics Manual, *supra* note 62, at 173-74.

<sup>131</sup> Ak. Stat. § 24.60.030(c).

<sup>132</sup> Nev. Rev. Stat. § 281A.520(2)-(4) (2009).

<sup>133</sup> OMB requires agencies to “appropriately limit external linking [from their official websites] to information or services necessary for the proper performance of an agency function.” Memorandum from Clay Johnson III, Deputy Director for Management, Off. Mgmt and Budget, to the Heads of Executive Departments and Agencies, *Policies for Federal Agency Public Websites 2* (2004), available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-04.pdf>.

In the legislative branch, it is a violation of federal criminal law to misuse the franking privilege for personal purposes.<sup>134</sup> Congressional rules mandate that franked mailings and emails may not be biographical or political in nature, and may not be used to “solicit[] political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office.”<sup>135</sup> According to regulations issued by the House and Senate, franked communications must avoid using political party labels, must not refer to past or future election campaigns, must not use political logos, slogans, pledges, or promises, and may not even not contain “partisan, politicized or personalized” comments critical of legislation or policy.<sup>136</sup>

The Rules of the United States House of Representatives and House ethics regulations prohibit the use of broadcast coverage or recordings of floor proceedings for any political campaign purposes.<sup>137</sup> Additionally, the law governs websites and social media accounts during the campaign period – an official congressional website may not contain a link to the campaign website of any Member of Congress or of any other political organization and, conversely, a Member’s campaign website may not contain a link to an official congressional website.<sup>138</sup>

Congressional ethics standards tightly manage the circumstances under which a communication may feature an official congressional seal or certain terms<sup>139</sup> by expressly forbidding the use of these official markers in any election communication, campaign solicitation, or personal correspondence.<sup>140</sup> U.S. House of Representatives rules also govern the non-governmental use of official press releases and photographs.<sup>141</sup>

## IV. Oversight Institutions

An independent, empowered oversight institution that is responsible for auditing and monitoring the use of state resources is essential in the development of a strong system to prevent or address potential abuse. Clarity is needed in the legal and regulatory framework as to an oversight institution’s mandate, and how compliance with the rule will be monitored. Additionally, oversight bodies should have “sufficient resources, independence, and political will to investigate potential violations and to initiate a remedy.”<sup>142</sup> In cases where more than one agency responsible for identification of violations, investigations and imposing of remedies, some experts have posited that “there should be a clear delineation of responsibilities that is communicated publicly as well as streamlined communication

<sup>134</sup> 18 U.S.C.A. § 1719 (1994).

<sup>135</sup> 39 U.S.C. § 3210(a)(5)(A), (C).

<sup>136</sup> See U.S. House of Reps. Comm’n on Cong. Mailing Standards, Regulations on the Use of the Congressional Frank §(4)(a), *as amended* (1998); see also Senate Franking Regulations, *supra* note 128, at 10-11.

<sup>137</sup> See U.S. House of Reps., 114<sup>th</sup> Cong., Rules of the House of Representatives Rule V, cl. 2(c)(1) (2015) (prohibiting use “for any partisan political campaign purpose”); see also House Ethics Manual, *supra* note 62, at 122.

<sup>138</sup> See Senate Select Comm. on Ethics, Campaign Guidance: Frequent Campaign Issues 2, available at [http://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=4c858006-4560-4a1b-9ed5-8a8d4434221f](http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=4c858006-4560-4a1b-9ed5-8a8d4434221f) (last visited Jul. 1, 2016); see also House Ethics Manual, *supra* note 62, at 131.

<sup>139</sup> Includes the terms “official business,” “U.S. Senate,” “U.S. House of Representatives,” and their derivatives.

<sup>140</sup> See House Ethics Manual, *supra* note 62, at 179-81; see also Senate Ethics Manual, *supra* note 62, at 171-72; U.S. Senate Ethics Comm., Official Letterhead and Postage 1, available at [http://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=dc90e163-c591-4571-9b16-5bc2b75f45a0](http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=dc90e163-c591-4571-9b16-5bc2b75f45a0) (last visited Jul. 1, 2016); 18 U.S.C. § 713 (prohibiting the use of governmental seals “for the purpose of conveying ... a false impression of sponsorship or approval by the Government of the United States”).

<sup>141</sup> See House Campaign Activity Guidance, *supra* note 86, at 15-16.

<sup>142</sup> Magnus Ohman & Megan Ritchie, *Campaign Finance Remedies*, in *International Election Remedies* (ABA, forthcoming 2016).

between the agencies.”<sup>143</sup> Alternatively, it may be possible to design an effective system characterized by “institutional multiplicity,” in which competing jurisdictions are enabled by “more than one institution [being] charged with performing a certain function.”<sup>144</sup> As the International Research Initiative on Brazil and Africa has noted, however, it is important to create a structure where the competing jurisdictions creates incentives to improve performance, rather than providing an option for institutions to shirk their responsibilities.<sup>145</sup>

Sri Lanka offers an instructive example of problematic lines of authority in oversight. Despite a legal framework that regulates the use of state resources and an Election Commission that has proven willing to take on the issue in Sri Lanka, the misuse of incumbency during election campaigns has become ubiquitous.<sup>146</sup> The Election Commission’s insufficient resources, coupled with the unwillingness of other oversight actors to proactively pursue their enforcement mandates, has created an environment that emboldens perpetrators to violate the law without fear of retribution.<sup>147</sup> The overlapping and blurred jurisdiction of several oversight bodies with mandates to combat the abuse of state resources – including the Election Commission, Permanent Commission to Investigate Allegations of Bribery or Corruption, Attorney-General, and the police – further encourages weak enforcement.

In contrast, the Brazilian system of oversight is characterized by institutional multiplicity,<sup>148</sup> with several institutions having a role in monitoring (the Federal Accounting Tribunal [TCU] and the Office of the Comptroller General), investigating (the Federal Public Prosecutors’ Office and the Federal Police), and applying penalties (administrative bodies and the judiciary) to those involved in corruption, including the abuse of state resources.<sup>149</sup> Unlike in Sri Lanka where there are problematic lines of oversight, some researchers have noted that this institutional multiplicity appears to facilitate increased monitoring and investigation of corruption.<sup>150</sup> However, they also noted that it has led to a hindrance of punishment, as the judicial system does not effectively or efficiently punish offenders.<sup>151</sup>

The 2015 general election in Nigeria offers a third illustrative case: violations of campaign regulations, including the misuse of state resources highlighted in this paper, went unaddressed during the election campaign according to election observers. The EU EOM noted that the Independent National Electoral Commission’s lack of sanctioning power and the accompanying lack of monitoring and sanctioning tools available to stakeholders “amplified the widespread sense of electoral impunity.”<sup>152</sup> Countries have adopted various approaches to monitoring, receiving and investigating complaints as well as making

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<sup>143</sup> *Id.*

<sup>144</sup> Mariana Mota Prado & Lindsey Carson, *Brazilian Anti-Corruption Legislation and its Enforcement: Potential Lessons for Institutional Design* 8 (International Research Initiative on Brazil and Africa (IRIBA), Working Paper No. 09, 2014) [hereinafter Mariana Mota Prado & Lindsey Carson, Working Paper 09].

<sup>145</sup> *See id.*

<sup>146</sup> Provisions in the legal framework targeting the abuse of state resources include: Democratic Socialist Republic of Sri Lanka Constitution May 15, 2015, art. 104B (4)(a) (Sri Lanka); Establishment Code c. XXXII (2013) (Sri Lanka); The Bribery (Amendment) Act, No. 12 of 1994 § 70 (Sri Lanka); and the Offences Against Public Property Act, No. 12 of 1982 (Sri Lanka). In 2015, the Department of Elections (now the Election Commission) took several actions aimed at addressing the abuse of state resources, including issuing repeated instructions to the police and distributing a circular defining “moveable and immovable property” that are recognized as state resources that should not be used during the campaign. *See* Transparency Int’l, Sri Lanka Electoral Integrity Report, *supra* note 48, at 14-15.

<sup>147</sup> For example, no violators have been tried under criminal provisions in the last five years. *See id.* at 8.

<sup>148</sup> *See* Mariana Mota Prado & Lindsey Carson, Working Paper No. 09, *supra* note 144.

<sup>149</sup> *See id.* at 10.

<sup>150</sup> *See id.*

<sup>151</sup> *See id.*

<sup>152</sup> *See* EU EOM Nigeria Final Report, *supra* note 54, at 20.

and enforcing decisions. In the U.S., the Office of Special Counsel (OSC) is the independent government agency charged with receiving complaints, investigating alleged violations, and prosecuting violations of the Hatch Act pertaining to the abuse of state personnel and physical resources.<sup>153</sup> The Merit Systems Protection Board (MSPB) is the administrative adjudicatory body that hears the cases brought by the OSC, and orders penalties if it finds a violation has occurred.<sup>154</sup> The OSC may also endeavor to resolve the case informally before prosecuting the violation before the MSPB.<sup>155</sup> Federal prosecutors have the jurisdiction to prosecute violations of the numerous criminal statutes related to coercing political activity, misuse of physical and financial resources, and the misuse of the franking privilege.<sup>156</sup>

For the legislative branch in the U.S., the ethics committees of the House and Senate are responsible for investigating violations of their respective rules and ethics manuals, as well as administering penalties if a violation is found.<sup>157</sup> Specifically, within the House of Representatives, the Office of Congressional Ethics (OCE) is tasked with receiving complaints and making initial investigations into allegations of violations.<sup>158</sup> If the OCE finds that there is a substantial reason to believe a violation has occurred, it will then forward the case on to the House of Representatives Committee on Ethics for further investigation and administration of penalties.<sup>159</sup> However, if rules regarding the franking privilege in the House are violated, the House Commission on Congressional Mailing Standards (“Franking Commission”), rather than the OCE, is the body responsible for investigating complaints of potential violations.<sup>160</sup> Like the OCE, it does not have power to grant legal relief;<sup>161</sup> but it will conduct an initial investigation and refer cases to the House Committee on Ethics.<sup>162</sup> Unlike the House, the Senate does not have a separate commission for initial investigation, thus the Senate Select Committee on Ethics is responsible for all enforcement process steps of all alleged violations of Senate Rules.<sup>163</sup>

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<sup>153</sup> 5 C.F.R. § 734.102(a)-(b); *see also* Eleanor Smith & Leslie B. Kiernan, *supra* note 118, at § 19:13.

<sup>154</sup> 5 C.F.R. § 734.102(b); *see also* Eleanor Smith & Leslie B. Kiernan, *supra* note 118, at § 19:13. There is no cause of action for citizens to sue individuals in courts for violating the Hatch Act. *See Webb v. Scott*, 2015 WL 1257513, at \*15 (D. Utah 2015) (citing *Hall v. Clinton*, 285 F.3d 74, 83 (D.C. Cir. 2002) as authority that there is no private cause of action for Hatch Act violations), *rev'd on other grounds*, 2016 WL 1105254 (10th Cir. 2016); *see also Brooks v. Nacrelli*, 331 F. Supp. 1350, 1354 (E.D.Pa.1971) (government exclusively enforces the Hatch Act), *aff'd*, 473 F.2d 955 (3d Cir.1973). However, a private citizen may file a complaint with the OSC regarding possible violations of the Hatch Act, and the OSC may then investigate and possibly prosecute the violation. *See* Eleanor Smith & Leslie B. Kiernan, *supra* note 118, at § 19:13.

<sup>155</sup> *See* Off. of Special Counsel, Annual Report to Congress for Fiscal Year 2014, 39 (2014).

<sup>156</sup> *See* Craig C. Donsanto et al., *supra* note 59, at 109-15; *see also* H. Andrew Wasmund, *Use and Abuse of the Congressional Franking Privilege*, 5 Loy. L.A. L. Rev. 52, 80 n.172 (1972).

<sup>157</sup> *See General Prohibition Against using Official Resources*, *supra* note 113; *see also* Staff of H. Comm. on Ethics, 113<sup>th</sup> Cong., Summary of Activities 13 (2d Sess. 2015).

<sup>158</sup> *See id.*

<sup>159</sup> *See id.*

<sup>160</sup> 2 U.S.C.A. § 501(e) (1981).

<sup>161</sup> *See* Barbara J. Van Arsdale et al., *Postal Service*, 28 Fed. Proc., L. Ed. § 63:72 (citing *Common Cause v. Bolger*, 512 F. Supp. 26 (D.D.C. 1980)).

<sup>162</sup> 2 U.S.C.A. § 501(e); *see also Public Citizen Files Complaint for Violations of Franking Privilege*, Public Citizen: WatchDog Blog (Oct. 23, 2008 3:26 PM) <http://www.commondreams.org/newswire/2008/10/23/public-citizen-files-complaint-violations-franking-privilege-rep-peter-roskam>. The Franking Commission is also responsible for issuing advisory opinions that House of Representative Members are required to obtain before sending out the mass communication to certify that it is in compliance with the rules. *See* 39 U.S.C. § 3210(d)(1)(6)(A); *see also* 2 U.S.C.A. § 501(d) (1981).

<sup>163</sup> *See* Jacob R. Straus, *Enforcement of Congressional Rules of Conduct: A Historical Overview*, Cong. Research serv. 15 (2015).

In the judicial branch each circuit has a judicial council, made up of judges sitting within that circuit, which is responsible for monitoring and receiving complaints of judicial misconduct and issuing penalties for violations.<sup>164</sup>

## V. Available Remedies and Sanctions for Violations of Restrictions on State Personnel

In addition to establishing clear, legal guidelines outlining restrictions in the participation and contribution of state personnel to electoral campaigns to prevent the abuse of state resources, it is also important for states to have remedies available to address violations. The Venice Commission and OSCE have stated that “Public employees who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions, up to the dismissal from office,”<sup>165</sup> and that “Political parties and candidates who deliberately benefit from a misuse of administrative resources should be subject to a range of sanctions proportionate to the offence committed.”<sup>166</sup> Ohman and Ritchie posit that the most effective systems will have a range of remedies available, and identify a clear remedy for each potential violation determined by the law.<sup>167</sup> These options can include “formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution.”<sup>168</sup>

Regardless of the types of restrictions that may be built into the legal framework, the lack of effective sanctions and remedies associated with these provisions may create apertures for misuse of state resources. According to the EU EOM, Nigeria’s Independent National Electoral Commission “lacks sanctioning powers for enforcement of campaign regulations and mechanisms for monitoring and sanctioning non-compliance were *de facto* non-existent” during the 2015 general elections. Despite the fairly significant misuse of administrative resources and abuse of powers of the incumbency, violations took place with impunity.<sup>169</sup> Similarly, a 2015 OSCE/ODIHR report concluded that the Belarusian legal framework does not adequately protect against the misuse of state resources.<sup>170</sup> Nearly all of the 2,000 applications and complaints filed during the 2015 presidential election – many of which related to the misuse of state resources for collecting signatures and campaigning – were rejected by the election commissions.<sup>171</sup> Overall, no detailed information was published by the Central Election Commission, and the dispute resolution process was “insufficiently transparent and did not provide effective remedy.”<sup>172</sup> Additionally, although the leading government auditing body in Brazil, the TCU, has a full complement of sanction powers for the misuse of public funds, the sanctions it imposes may be appealed and overturned by the judiciary, which is reportedly common.<sup>173</sup> Moreover, even if the sanction is not

<sup>164</sup> See 28 U.S.C. §§ 354(a), (b); see also *Guide to Judiciary Policy*, *supra* note 36, at Canon 1. Anyone may file a complaint with the judicial council alleging judicial misconduct. See U.S. Comm. on Judicial Conduct and Disability, *Filing a Complaint of Judicial Misconduct or Judicial Disability Against a Federal Judge*, 2, available at <http://www.uscourts.gov/file/3319/download> (last visited June 17, 2016).

<sup>165</sup> Venice Comm’n & OSCE/ODIHR, *Joint Guidelines*, *supra* note 10, at § C.2.2.

<sup>166</sup> *Id.* at § C.2.3.

<sup>167</sup> Magnus Ohman & Megan Ritchie, *supra* note 142.

<sup>168</sup> Venice Comm’n & OSCE/ODIHR, *Joint Guidelines*, *supra* note 10, at § C.2.3.

<sup>169</sup> See EU EOM Nigeria Final Report, *supra* note 54, at 20.

<sup>170</sup> See OSCE/ODIHR, *Republic of Belarus Presidential Election 11 October 2015: OSCE/ODIHR Election Observation Mission Final Report 6* (2016).

<sup>171</sup> See *id.* at 3.

<sup>172</sup> *Id.*

<sup>173</sup> See Lindsey Carson & Mariana Mota Prado, *Mapping Corruption and its Institutional Determinants in Brazil 27* (IRIBA, Working Paper No. 08, 2014) (citing Santiso, 2007; Speck, 2011; Melo, 2013).



overturned, the considerable delays of the appeals process often renders the applicable statute of limitations exhausted, and the sanction becomes unenforceable.<sup>174</sup> Furthermore, the TCU's ability to impose fines against a particular public officials may be eliminated if the defendant leaves public office.<sup>175</sup>

In the U.S., when an employee violates the Hatch Act restrictions on personnel activity, usage of the state's physical property and/or official communication resources, there are a range of civil sanctions available for violations, including demotion, financial penalty (not to exceed \$1,000), and suspension or removal from office.<sup>176</sup> The MSPB may consider numerous mitigating or aggravating factors when determining which of these penalties is appropriate to administer.<sup>177</sup> Additionally, criminal penalties, including imprisonment of up to three years, may be imposed where a federal executive branch employee engages in coercive efforts – intimidation, threats, commands, and the like – to motivate another federal employee to engage in or refrain from election activity.<sup>178</sup> However, as the statute requires prosecutors to prove beyond a reasonable doubt that the employee explicitly and intentionally coerced another employee, there are no reported cases where this statute has been used.<sup>179</sup> For congressional Members and employees, and federal judges, a wide range of penalties for misconduct may be imposed by the ethics committees or judicial councils, including expulsion, monetary fines, or reprimanding letters, to name a few.<sup>180</sup>

The U.S. is an interesting case study given the evolution of the Hatch Act. Prior to 2012 amendments, an employee who violated the Hatch Act was subjected to either removal or a minimum 30-day suspension with no pay, regardless of how minor the violation.<sup>181</sup> This provision was highly criticized as harsh and ineffective,<sup>182</sup> as the limited penalty options and the complexity of the Act discouraged employees from reporting known violations to the OSC.<sup>183</sup> The reformed provisions allow the MSPB to apply more appropriate penalties, and ensure that violations of the Hatch Act are more likely to be reported and enforced.<sup>184</sup>

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<sup>174</sup> *See id.*

<sup>175</sup> *See id.* at 33.

<sup>176</sup> 5 U.S.C.A. § 7326.

<sup>177</sup> *See* Special Counsel v. Lewis, 121 M.S.P.R. 109 (2014), *aff'd by* Lewis v. Merit Sys. Prot. Bd., 594 F. App'x. 974, 977 (Fed. Cir. 2014). *See also* S. REP. NO. 112-21, at 15 (2012) (“the Committee expects that, in selecting a penalty for a Hatch Act violation, the Board will consider the severity of the violation and other aggravating or mitigating factors, as the Board does with respect to non-Hatch Act violations”).

<sup>178</sup> 18 U.S.C.A. § 610 (1996).

<sup>179</sup> *See* Lydia Segal, *Can We Fight the New Tammany Hall?: Difficulties of Prosecuting Political Patronage and Suggestions for Reform*, 50 Rutgers L. Rev. 507, 531 (1998). A recent search of case law reveals that there are still no reported cases.

<sup>180</sup> *See* Jack Maskell, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, Cong. Research serv., 2 (2013).

<sup>181</sup> *See* Eileen Ambrose, *Campaign Rules for Federal Employees Get an Update*, BALTIMORE SUN (Jan. 27, 2013), [http://articles.baltimoresun.com/2013-01-27/news/bs-md-federal-hatch-20130127\\_1\\_federal-employees-government-employees-campaign-rules](http://articles.baltimoresun.com/2013-01-27/news/bs-md-federal-hatch-20130127_1_federal-employees-government-employees-campaign-rules); *see also* Shannon Azzaro, *supra* note 58, at 807; Alyssa Rosenberg, *Employee advocates cite disparities in hatch Act enforcement*, Gov. Exec. (Oct. 18, 2007), <http://www.govexec.com/oversight/2007/10/employee-advocates-cite-disparities-in-hatch-act-enforcement/25539/>. Moreover, removal was the presumptive penalty unless the Merit Systems Protection Board found by unanimous vote that the violation warranted suspension instead. *See* S. REP. NO. 112-21, at 15 (2012).

<sup>182</sup> *See* Shannon Azzaro, *supra* note 58, at 806-7; *see also* Eileen Ambrose, *supra* note 181.

<sup>183</sup> *See* Eileen Ambrose, *supra* note 181; *see also* Alyssa Rosenberg, *supra* note 181.

<sup>184</sup> *See* Eileen Ambrose, *supra* note 181; *see also* S. REP. NO. 112-21, at 15 (2012).

In addition to disciplinary action available under the Hatch Act and ethics committees, individuals may be subject to criminal penalties for abusing physical resources and state funds. Under 18 U.S.C. § 607, if an employee or official of the federal government – including the President, Vice President, and Members of Congress – solicit funds for a campaign while in a government building used for official government duties, he or she may be sanctioned with a \$5,000 criminal fine and/or up to three years in prison.<sup>185</sup>

Of note, there are no recent reported cases of 18 U.S.C. § 607 being utilized to prosecute individuals for soliciting funds from government buildings.<sup>186</sup> However, other tangential criminal statutes<sup>187</sup> have been utilized in two cases attempting to hold Members of Congress accountable for representing that public funds were used to pay staff for official conduct, when in fact the time was campaign-related. The courts' decisions in these cases held that although federal appropriations generally require funds to be used for the purposes for which they were allocated,<sup>188</sup> the issue was non-justiciable because congressional rules, rather than a statute, explicitly prohibit funds from being used for campaign purposes.<sup>189</sup> Both of those decisions found that the Senate and House Committees should determine whether funds had been used inappropriately, and whether false statements had been made, pursuant to their own standards of prohibited conduct.<sup>190</sup> Thus Members of Congress who inappropriately use Congressional funds for campaign purposes will be subject to disciplinary action from their respective ethics committees.

In the House of Representatives, there is no specific listing of which sanctions are to be issued for which violations of laws, regulations, or codes of conduct that are applicable to Members and employees.<sup>191</sup> Thus, if a Member abuses the franking privilege, he or she may be subject to any of the disciplinary actions available to the House Committee on Ethics, including expulsion, censure, reprimands, and fines, among other penalties.<sup>192</sup> Similarly, if a Member in the Senate abuses his or her franking privilege, he or she technically may be subject to any of the available disciplinary actions available to the Select Committee on Ethics.<sup>193</sup> These disciplinary actions include expulsion, censure, financial restitution, referral to a party conference, reprimand, or public or private "Letters of Admonition."<sup>194</sup> However, the most likely disciplinary action for abusing the privilege is that the Member would receive a reprimand letter and would be required to refund the cost of the mailing.<sup>195</sup> Moreover, criminal fines may be issued

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<sup>185</sup> 18 U.S.C.A. § 607 (2002).

<sup>186</sup> The last reported case is in 1908. *See United States v. Thayer*, 209 U.S. 29 (1908). The Department of Justice has stated that "most matters that have arisen under § 607 have involved computer-generated direct mail campaigns. . . such matters are unlikely to warrant prosecution." Craig C. Donsanto et al., *supra* note 59, at 114. Rather, the DOJ will inform the individual of the prohibition, and ask that the mailing cease, but if there is a failure to comply, the situation may then give rise to prosecution. *Id.*

<sup>187</sup> 18 U.S.C.A. §641 (2004) (theft of government property or funds) and 18 U.S.C.A. § 1001 (2006) (making false statements to the government).

<sup>188</sup> 31 U.S.C.A. § 1301.

<sup>189</sup> *See United States v. Rostenkowski*, 59 F.3d 1291 (DC Cir 1995); *see also United State ex rel. Joseph v. Cannon*, 642 F.2d 1373 (DC Cir 1981).

<sup>190</sup> *See Id.*

<sup>191</sup> *See Jack Maskell, supra* note 180.

<sup>192</sup> *See* H.R. Comm. On Ethics, 114th Cong, Rules 24(d)-(e) (2015).

<sup>193</sup> Senate Franking Regulations, *supra* note 128, at 17 ("[t]he Committee is empowered, if it determines there is a reasonable justification for the complaint. . . [to] recommend disciplinary measures").

<sup>194</sup> Jacob R. Straus, *supra* note 163, at 15. Letters of Admonition are technically not considered acts of discipline, but they may still be issued by the Ethics Committee. *Id.*

<sup>195</sup> *See* Select Comm. on ethics, franking: quick reference 2, [http://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=116386DE-CE5F-4C66-B2A2-C06B0771EEB9](http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=116386DE-CE5F-4C66-B2A2-C06B0771EEB9) (last visited June 7, 2016); *see also Public Citizen Files Complaint for Violations of Franking Privilege, supra* note 162.

for either Members of the House or Senate,<sup>196</sup> and although there is no minimum or maximum fine prescribed in the statute, there are also no cases on record where the criminal penalty has been utilized.

Anyone may file a complaint with either the Franking Commission or the Select Committee on Ethics regarding suspected violations of the franking privilege.<sup>197</sup> However, if an individual were to sue a Member for abuse of the franking privilege in federal court, standing and available remedies would be severely limited.<sup>198</sup> Because legislation mandates that a complaint regarding abuse of the franking privilege is submitted to either the Select Committee on Ethics or the Franking Commission before a court will have jurisdiction to hear any civil action on the issue, there are few abuse of franking privilege cases brought in court that survive standing challenges.<sup>199</sup> Courts that have heard cases despite this requirement have found that a candidate for Congress has standing to sue on the grounds that the abuse puts the incumbent at an unfair advantage,<sup>200</sup> or that his or her right to run for office is violated by the abuse.<sup>201</sup> However, even if a plaintiff were to survive a standing challenge, not only is injunctive relief the only available remedy,<sup>202</sup> but the plaintiff must also prove that there is a likelihood of additional violations in the future and that the injunctive relief is proper to prevent an unfair advantage in the election.<sup>203</sup> Thus, filing civil actions in courts is uncommon practice today.<sup>204</sup> But the lack of civil actions may also be contributed to the fact that the Franking Commission must approve franked mass communication before it is sent out,<sup>205</sup> and consequently, much of the illegal use of the franking privilege has been greatly reduced.<sup>206</sup>

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<sup>196</sup> 18 U.S.C.A. § 1719 (“[w]hoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined under this title”).

<sup>197</sup> See Jacob R. Straus, *supra* note 163, at 15; see also 2 U.S.C.A. § 501(e); The Commission on Congressional Mailing Standards, Regulations on the Use of the Congressional Frank By Members of the House of Representatives & Rules of Practice in Proceedings Before the House Commission on Congressional Mailing Standards 28 (2015).

<sup>198</sup> See Barbara J. Van Arsdale et al., *supra* note 161, at § 63:73 (citing to *Cervase v. Rangel*, 464 F. Supp. 68 (S.D. N.Y. 1978) (holding that when the only injury plaintiff alleges due to the abuse of the franking privilege is tax liability, plaintiff will not have standing)).

<sup>199</sup> See Leah Sellers, *We Should Abolish the Franking Privilege, Mass Constituent Communications, and other Campaign-Related Government Speech But Frankly, It Won't Be Easy*, 42 U. Tol. L. Rev. 131, 145 (2010); see also 2 U.S.C.A § 501(e); 2 U.S.C.A. § 502(c); *Virginians Against a Corrupt Congress v. Moran*, 805 F. Supp 75 (D.D.C 1992) (citizens filing complaint against congressman alleging violation of franking laws and regulations did not have standing in federal court because they did not exhaust administrative remedies).

<sup>200</sup> See *Owen v. Mulligan*, 640 F.2d 1130 (9th Cir. 1981); see also *Common Cause v. Bolger*, 512 F. Supp. 26 (D.D.C. 1980); Barbara J. Van Arsdale et al., *supra* note 161, at § 63:73.

<sup>201</sup> See *Schiaffo v. Helstoski*, 492 F.2d 413 (3d Cir. 1974); see also Barbara J. Van Arsdale et al., *supra* note 161, at § 63:73.

<sup>202</sup> Injunctive relief is when a court orders an individual to perform or cease certain behavior rather than imposing monetary damages. It is considered an extraordinary remedy. See *Injunction*, Legal Info. Inst., <https://www.law.cornell.edu/wex/injunction> (last visited June 14, 2016).

<sup>203</sup> See Barbara J. Van Arsdale et al., *supra* note 161, at § 63:73 (citing *Hoellen v. Annunzio*, 348 F. Supp. 305 (N.D. Ill. 1972), judgment aff'd, 468 F.2d 522 (7th Cir. 1972); *Owen v. Mulligan*, 640 F.2d 1130 (9th Cir. 1981); *Caprio v. Wilson*, 513 F.2d 837 (9th Cir. 1975)).

<sup>204</sup> See Leah Sellers, *supra* note 199, at 145.

<sup>205</sup> See *id.*

<sup>206</sup> See Matthew E. Glassman, *Franking Privilege: Historical Development and Options for Change*, Cong. Research Serv., 22 (2015).



## VI. Conclusion

With appropriately functioning oversight institutions and effective enforcement of assigned penalties, sanctions, and remedies, it is possible for countries to craft a set of laws and regulations that can deter and mitigate the misuse of state resources in elections. The authors identified several relevant principles in the Approach section of this paper. These include: (1) establishing effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections; (2) ensuring effective and transparent oversight of these mechanisms by independent institutions; and (3) making available appropriate and enforceable sanctions and penalties for state officials who abuse state resources.

This paper has comprehensively examined U.S. legal provisions focused on the prevention of specific abuses related to a state's *institutional* and *financial* resources. An array of other country examples illuminate the challenges that arise for deterrence and mitigation of such abuses when legal frameworks are unclear or incomplete, or when sanctions and penalties are inappropriate, insufficient, or poorly-enforced. Through this analysis, the authors have identified several elements that may contribute to an effective legal and regulatory framework. This list is not exhaustive, but provides a foundation for further research and analysis. These elements are outlined in the table on the following page.

The presence of these legal and regulatory framework provisions alone is likely not sufficient to be effective; however, enforceable provisions that reinforce a perception of fairness are a starting point in the development of a strong structure to prevent the abuse of state resources. More research is needed to determine if this paper has identified the core set of elements required to establish the foundation of an effective regulatory and enforcement regime. An important next step will also be to determine whether a framework that contains all of these indicators – and is properly implemented and enforced – can in fact change the behavior of governmental actors as intended. Specifically, this research would evaluate whether such mechanisms have a discernible deterrence effect, and whether they raise confidence in and buttress the belief that perpetrators will be held accountable for abusing the state's financial and institutional resources, and for betraying the public trust.

**Figure 1: Necessary Elements of the Legal Framework**

<b>Principle</b>	<b>Necessary Elements of the Legal Framework</b>
<p>Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections</p>	<p><b>General Elements</b></p> <ul style="list-style-type: none"> <li>• Clear definitions of the permissible uses of state resources as well as what constitutes an abuse</li> <li>• Regulations that clearly apply to both incumbent and opposition political forces and do not favor or discriminate against any party or candidate</li> <li>• Distinctions between the operation of government, activities of the civil service and the conduct of the electoral campaign</li> <li>• Clear balance between the general right to stand for elections and the need for a clear separation between candidacy and public office</li> </ul>
	<p><b>Restrictions on State Personnel</b></p> <ul style="list-style-type: none"> <li>• General requirements to act impartially</li> <li>• Specific requirements for public officials who are seeking elected office, differentiated by position</li> <li>• Restrictions on or rules for contributing resources to electoral campaigns</li> </ul>
	<p><b>Restrictions on the Use of State Funds and Physical Resources</b></p> <ul style="list-style-type: none"> <li>• Restrictions on the use of physical resources (e.g., vehicles, facilities, equipment)</li> <li>• Restrictions on the use of state funds</li> </ul>
	<p><b>Restrictions on Official Government Communications to the Public</b></p> <ul style="list-style-type: none"> <li>• Restrictions on the use of official government communication tools</li> <li>• Requirements for the equitable use of state-led/managed media</li> </ul>
<p>Ensure effective and transparent oversight by independent institutions</p>	<ul style="list-style-type: none"> <li>• Provisions establishing a mandate for independent oversight institution(s)</li> <li>• Mechanisms for ensuring compliance with rules and regulations</li> <li>• Provisions for human and financial resources to support the mandates of oversight bodies</li> <li>• Assurance of immunity from politically-motivated prosecution, penalty or removal from office without cause</li> </ul>

Principle	Necessary Elements of the Legal Framework
<p>Make available appropriate and enforceable sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions</p>	<ul style="list-style-type: none"> <li>• Range of penalties/remedies, including criminal and disciplinary sanctions, that are targeted to specific offenses or categories of offenses</li> <li>• Provisions for standing to register complaints or press charges</li> </ul>

**Figure 2: Indicators of Effectiveness**

<b>Indicators of Effectiveness</b>
<ul style="list-style-type: none"> <li>• Subjects of the law (including public employees and candidates) are aware of the rules by which they are bound and are given an opportunity to present a case in the event of an alleged violation</li> <li>• Assignment of mandates and responsibilities facilitates monitoring, investigation, and enforcement of corruption cases, whether these mandates are entirely distinct or provide for some institutional multiplicity</li> <li>• Institutions exercise their legal authority and mandate to monitor parties and candidates and to enforce penalties regardless of political affiliation</li> <li>• State actors are effectively insulated from political pressure and reprisals</li> <li>• Institutions are reporting potential abuses of state resources in a timely, clear and comprehensive manner</li> <li>• Process for addressing violations is transparent and accessible</li> <li>• Available remedies are timely, proportional, enforceable and have the desired deterrent effect</li> <li>• Standing rules are clear and practicable, deterring frivolous claims without having a chilling effect on legitimate complaints or charges</li> </ul>



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