

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE  
PREVENTION OF CORRUPTION**

**ARTICLE 7 UNCAC**

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION CANDIDATES**

**BRAZIL (FIFTH SESSION)**

**Measures, Policies and Inspection Practices of Funding of Election Campaigns and Political Parties.**

The only source of direct public subsidies to political parties aiming at funding its maintenance and electoral expenses foreseen in the Brazilian legislation is the Special Fund for Financial Assistance to Political Parties. The intention of this fund is allowing political parties and candidates to be less dependent of private resources, thus, reducing the economic power influence on the campaigns and balancing the electoral disputes. Despite being established in 1965, only through the enactment of the Law of Political Parties (LPP)-Law n° 9.096 of September 19, 1995, when it was established that the budgetary allotments of the Union would compose the revenue of the fund jointly with electoral fines and allowed donations, the Fund could be employed in its institutional purposes. Today, LPP stipulates that the money risen by the fund shall be distributed in a rate of 5% among the parties registered in the Superior Electoral Court, and 95% among parties with representation in the House of Representatives, proportionally to the number of votes obtained in the previous election. That means that the parties having more representatives tend to obtain a larger revenue than the small parties.

The other forms of direct public funding are prohibited by the LPP, which in its Art.31 prohibits donations from foreign government or entities; authorities from public agencies, except the allotments of partisan funds; autarchies, public companies or public utilities, private-public organizations, and foundations instituted by law and for whose resources government agencies or entities compete; and professional associations and trade unions.

With regard to indirect public funding, the Brazilian legislation does not foresee the grant of fiscal benefits, such as exemptions, deductions or fiscal credits on private donations from legal entities or individuals, allowing, however, fiscal compensation through free access to the media, such as, radio and television, by parties and candidates in the form established by law. The law also foresees the use of public schools or Legislative houses for performing political-party meetings.

In relation to private funding of the parties and campaigns, up to 1993, there were not any important obstacles opposing resources originated from individual donors, whose donations were stipulated by the parties themselves. It was only from 1993 on that limits were established for individual donors. With the enactment of the Law of Political Parties, which has had several amendments since its promulgation in 1995, it was established that individuals would only be allowed to offer 10% of their yearly gross income, while legal entities were limited to 2% of the respective yearly operational gross revenue. The responsibility for establishing limits to the use by candidates of their own resources remained belonging to the parties. The model employed may generate distortions once it allows the electors and companies with higher revenues to make

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donations in values higher than the remaining population, thus enabling them to exert greater influence on candidates and their policies, to detriment of most of the Brazilian population.

#### **ACCOUNTABILITY- LEGISLATION ON ELECTORAL EXPENSES**

Although the political parties and the candidates are imposed by the legislation the duty of accountability on costs and expenses to the Electoral Justice, it does not impose any absolute limit for global expenses of parties or each candidate during the campaigns. Through the Election Code, it is the parties' responsibility to set the maximum value of the candidates' expenses and the total amount spent by the party, except if up to June 10 of each election year, a specific law is enacted regulating the matter, which is an unprecedented event up to the present. Despite that, the practice of "slush funds" or resources received by campaigns and not officially booked is notorious. The casuistry demonstrates that most times, the money not booked has illicit origin and, many times, it arises from deviations of the public coffers or the organized crime.

In Brazil, at least since 1965, there always have been strong control by the State on political parties, with the Law of Political Parties since 1965 imposing the accountability of parties and their committees at the end of each campaign and its submission to inspection by the inter-partisan committees, which were responsible for inspecting and publishing the results of such inspection. According to the present law, the parties must annually report to the Electoral Court through submission of balance sheets. In election years, as regulated by Law nO 9.504/97, in its current wording, the candidates or their respective committees must report to the Electoral Court within two months subsequently the elections. During the election period, this obligation is extended to political parties, which are obliged to send monthly balance sheets in the four months prior to elections and in the subsequent two months. The inspection of accounts, as in all election process is the Electoral Court's responsibility, which according to Art. 34 of the LPP, inspects the party's bookkeeping and accountability and the electoral campaign expenses, attesting its conformity to the legal parameters established in the LPP and Law no 9.504/97.

In 2002, with Resolution 20.987 of 2002, the accountability started to adopt the electronic format through the System of Accountability of the Electoral Campaign by TSE, which allowed the electors to consult, on the Internet, detailed information on budgets and expenses of candidates, parties and financial committees. This duty of releasing data on the internet was an object of many amendments, with the most recent brought with the new wording provided by Law 12.891 of 2013, to § 4 of Article 28 of Law 9.504/97, which imposed on political parties, coalitions, and candidates the duty of releasing, on the course of the election campaign, through the global computer network, a report discriminating funds in money or estimated in money that they received for election campaign financing and the expenses they made. The indications of the names of donors and the values donated, however, only became due in the final accountability.

These statistics are provided by the TSE on its website, specifically in the address <http://www.tse.jus.br/noticiastse/boletim/estatisticas-das-contas-de-candidatos-em-2012-estao-disponiveis-no-portal-do-tse>.

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