

## **A. Pamela San Martín Ríos y Valles**

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### **Summary**

Pamela San Martín holds a law degree from one of Mexico's foremost law schools, the *Escuela Libre de Derecho*. Her education and professional career have centered around protecting human rights, and upholding democratic institutions, both during her tenure at Mexico City's Human Rights Commission (CDHDF), as well as during her time at Mexico's Federal Electoral Institute (IFE)<sup>1</sup> and later National Electoral Institute (INE).

On April 4, 2014 she was appointed as one of eleven Electoral Councilors at the National Electoral Institute (INE) by Mexico's Congress for a six-year term—the highest position in Mexico's the electoral management body. The INE is a constitutionally autonomous institute that is charged with the organization and arbitration of elections in Mexico. Her work at all times focused on guaranteeing that votes were cast in a free and informed manner through measures that ensured electoral integrity, fair competition, and freedom of expression.

In terms of electoral organization, during her mandate, she presided over numerous electoral organization commissions.<sup>2</sup> Under her leadership, these commissions took important actions to bolster the legal certainty of electoral logistics, with a focus on guaranteeing rights under conditions of equality and non-discrimination. As President of these commissions she was directly involved in organizing over 30 local elections across the country, including the historical election of Mexico City's Constituent Assembly.

With regards to electoral arbitration, it is noteworthy that San Martín presided over the Radio and Television Committee (2014-2015), where she was responsible for the administration of Mexico's political communication model, which serves to guarantee fair access to public and private radio and television stations for candidates and political parties.<sup>3</sup> She was also a member of the Campaign Audit Commission (2017-2020) which is charged with studying whether candidates and campaigns complied with Mexico's strict campaign finance rules.

Between 2014 and 2015, three important aspects of electoral law in Mexico were applied for the first time: gender parity in the nomination of candidates; Mexican citizens were allowed

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<sup>1</sup> IFE was Mexico's electoral management body, a constitutionally autonomous institute in charge of the organization and arbitrage of federal elections until April 2014 when, through a constitutional reform, it was replaced by the INE, with a scope of action not only in federal electoral processes, but with responsibilities in local elections, in conjunction with local electoral management bodies.

<sup>2</sup> The commissions of the General Council of the INE are the bodies in charge of directing and following up on the different activities entrusted to the Institute and overseeing compliance with the guiding principles of the electoral function. Likewise, they are the prior space for the deliberation of documents that will be turned over to the General Council for approval.

<sup>3</sup> It is worth noting that in Mexico it is constitutionally forbidden for parties or candidates to buy political advertisement on TV or radio. It is also forbidden for third parties or campaign contributors to buy TV or radio advertisement for campaigns. Instead, a set amount of time on TV and radio stations is apportioned and distributed to electoral campaigns. The IFE in the past, and now the INE, through its Radio and TV Committee is charged with ensuring fair legal criteria are adopted for this model. The INE is therefore a key institution for the preservation of fairness in the electoral competition.

to run as independent candidates; and an internal party election to renew its leadership was organized by the electoral authority. All of these novel processes were undertaken under San Martin's chairmanship over the respective commission charged with overseeing these activities at the INE.

She has also been invited to speak and lecture at multiple national and international academic and public institutions on subjects related to human rights, elections, freedom of expression, inclusion, corruption, and democracy. It is worth highlighting that she participated in a meeting with the Rapporteurs of Freedom of Expression from the UN and the IAHRC, representing the INE, during their official joint meeting to Mexico from November 27 to December 4, 2017, which sought to evaluate the state of freedom of expression in the country, and in particular, journalists' safety.

In the belief that elections are the main form of peacebuilding in areas under conflict, she participated in two electoral observation missions to Colombia: one for the plebiscite on the Peace Accord, in 2016, and for the election of post-conflict local authorities, in 2019.

Since her appointment as Electoral Councilor, she has frequently appeared on Mexican television and radio programs as a political analyst, and has written numerous op-eds in media of national circulation, about Mexican democracy, freedom of expression, and the preservation of human rights. San Martin has also published several texts in specialized journals. Since February 2020, she is a member of the Editorial Board of one of Mexico's most important and widely circulated newspapers, *Reforma*, which was also a key media outlet of Mexico's transition to democracy in the 1990s.

At the Mexico City Human Rights Commission<sup>4</sup> (2002 to 2010), she was responsible for protecting victims of human rights violations, and investigating complaints related to torture, human trafficking, feminicides, and others. She also researched and wrote recommendations and special reports, including a special report concerning human rights violations in the procurement of justice in the case of "New's Divine", which then became emblematic of flaws in procurement of justice in Mexico City and spurred important institutional changes in the city.

Since leaving her post as Electoral Council in April 2020, San Martin has worked as a consultant and political analyst on elections, democracy, and human rights. In this capacity, she has worked alongside civil society organizations, including *pro bono* consultancy work for the Mexico and Central America office of Article 19 where she helped them with litigation at Mexico's Supreme Court in a case relating to the right to access information, freedom of expression and media regulation. She is also currently an international consultant for the Colombian Electoral Observation Mission, where she is responsible for coordinating Reports on Violence against political, social and communal leaders. In October 2020 San Martin was appointed Technical Secretary to Interamerican Union of Electoral Bodies' election observation mission, for Bolivia's 2020 General Elections.

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<sup>4</sup> Mexico City's Human Rights Commission is the public body for the defense of human rights of Mexico City, which has been a key institution in setting human rights protection standards since Mexico's transition to democracy.

## **Strategic interventions at the INE (2014-2020)**

*The following are a sample of some strategic interventions as Electoral Councilor*

### ***Definition and scope of prior censorship***

On numerous occasions, the INE's Commission of Complaints faced the decision of whether to issue precautionary measures, directed at the suspension of political advertisement on radio and television that had yet to be aired, but which had already been uploaded to the INE's internet portal.<sup>5</sup>

Since 2010, the IFE had already deliberated on similar cases and, along with the Electoral Tribunal, it had resolved that the Commission on Complaints could only analyze the content of political messages that were already being aired on radio and television, so as to not incur in an act of prior censorship. At one point, however, the Commission and the Electoral Tribunal modified their criterion, thus instructing the study and the suspension of advertisements from the moment they were uploaded to the internet portal.

San Martin maintained that the study of political advertisement, and its suspension, if it occurs before the message is aired on radio and television, constitutes prior censorship, which is proscribed by both the Constitution and international treaties. This is so because the main protection against prior censorship is that the State cannot limit the spread of messaging before it has entered the public realm through the media the messages were produced for. This is true despite the fact that the message may indeed infringe rules in such a way that merits the eventual suspension of its broadcasting.

### ***Definition and scope of slander as a limit to freedom of expression***

Before the 2014 constitutional reform, article 41 of the Mexican Constitution established the prohibition of political advertisement that contained expressions which *denigrate institutions and political parties, or which slander persons*. During the period when this text was valid, the administrative and judicial interpretation of freedom of expression was strict, proscribing only contents that falsely imputed the carrying out of a crime.

After the 2014 constitutional reform, this article was modified, and the reference to denigration was removed, leaving slander as the only limitation to freedom of expression when it comes to political advertisement. Nevertheless, based on that change, it was interpreted in the opposite way, expanding the scope to prohibit not only the false imputation of a crime, but also to the imputation of a false fact.

San Martin argued that the limitations on freedom of expression must be only those that are expressly present in the constitution and cannot admit ample interpretation. If the text of the constitution only proscribes slander as a form of limiting freedom of expression, this cannot be extended to give it a different meaning that may magnify the constitutional restriction in such a way that harms freedom of expression. Additionally, any such restriction must be

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<sup>5</sup> The purpose of this portal is to make the content of the political advertisements that have been programmed by the different political contenders transparent.

interpreted in such a way that a statement is deemed slanderous only when there is a direct link between the supposedly slanderous statement and the subject of the statement, and where no alternative interpretation is possible.

***Definition and scope of slander as a limitation of freedom of expression***

The proscription of slanderous messages, contained in article 41 of the Mexican Constitution, is applicable only to political advertisement by campaigns.

However, in 2015, a candidate aired a slanderous message in a radio interview that had occurred a few days prior (he accused his rival of being an assassin, without there being any court ruling to back up his statement). Despite this being a *fait accompli*, in relation to precautionary measures, the Commission on Complaints, ordered that the radio station should remove the recording of this interview from its website.

San Martin disputed that this decision was contrary to freedom of expression because the prohibition to air *expressions that slander persons* relating to electoral law, is confined to *political and electoral advertisement*, and that an interview could not be catalogued—in itself—as an act of political advertisement. Additionally, the precautionary measure went beyond its scope as the INE unduly ordered that the media outlet should remove the material from its website. This goes against the Mexican State's obligation to protect and guarantee freedom for journalists. Additionally, this decision could harm the right to access information, which is related to the right of digital memory, because citizens have a right to access sources of information that are stored in the internet—in the realm of interest, which is, in this case, electoral issues— so that they may form their own political ideas and, based on these, exercise their right to an informed vote.

## **Professional experience**

- Present. Expert/consultant on politics, elections, democracy, and human rights. *Pro bono* consultancy with the Mexico and Central America office of Article 19. International consultant for Colombia's Electoral Observation Mission. Technical Secretary to Interamerican Union of Electoral Bodies' election observation mission, for Bolivia's 2020 General Elections.
- 2014-2020. Electoral Councilor at Mexico's National Electoral Institute.
- 2010-2013. Advisor to Electoral Councilor Alfredo Figueroa Fernández at Mexico's Federal Electoral Institute.
- 2006-2010<sup>6</sup>. Area Director of the First Commissioner of Mexico City's Human Right's Commission (CDHDF). In the period of September 2009 to January 2010, she was appointed as the Acting First Commissioner.
- 2002-2006. Investigator in the First Commission of the General Commission of CDHDF.
- 1999-2001. Intern at the law firm of Arturo Alcalde Justiniani, specialized in labor law.
- 1997-1999. Intern at the General Directorate of Legal Affairs of the Secretary of the Environment, Natural Resources, and Fishing.

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<sup>6</sup> She secured this post in the Human Rights Career Service of Mexico City's Human Rights Commission.

## **Courses, conferences, and seminars (2014-2020)**

*The following is a selection of courses, conferences, and seminars*

**2020:** Visiting instructor to the course “Challenges of democracies”, National Autonomous University of Mexico, Nelson Mandela Chair.

Visiting instructor for the course “The Basic Parts of Campaign Finance Auditing”, *Seminario E-lectoral de Fiscalización*, organized by Mexico’s Electoral Tribunal.

**2019:** International expert at the conference “Democracies in Crisis: Corruption, transparency, and security” at the “Second International Seminar Fragmented Democracies. Social networks, corruption, violence, and elections” organized by the Electoral Observation Mission, National Electoral Council, and the National Civil Registry, Colombia.

Visiting instructor to the course “Control and Auditing of Political Finances: the case of Mexico”, in the fifth edition of the Central American School of Government and Democracy, El Salvador.

Guest panelist at the seminar “Proposals for the Electoral Reform of 2019” organized by the Institute of Legal Studies, National Autonomous University of Mexico.

Guest panelist at the conference “How can we achieve a participatory democracy?”, at the 7<sup>th</sup> International Book Fair of the Electoral Tribunal of Mexico.

**2018:** Guest panelist at the panel “Political Corruption and Elections” at the “National Anticorruption Summit of Chihuahua 2018”, organized by the Government of Chihuahua, Mexico.

“An overview on Mexican presidential election”, at the “Fourth North American Sustainable Economic Development Summit”, organized by the United States – Mexico Chamber of Commerce, Texas, USA.

**2017:** Guest speaker at the conference “Corruption in Colombia: the worst form of violence”, organized by *Foro Semana*, *Transparencia por Colombia* and *Caracol Televisión*, Colombia.

**2016:** Guest panelist at the convention “Is the political communication model at risk?”, Chamber of Deputies of the Mexican Congress.

## **Publications (2014-2020)**

*A selection of some columns, articles and reports*

**2020:** “*Decretos y acuerdos presidenciales en tiempos de pandemia: ¿uso o abuso del poder?*” (Presidential decrees and executive actions during the pandemics: use or abuse of power?), coauthored with Ana Lorena Delgadillo, *Revista Brújula Ciudadana*, no. 119, July.

Coord. *Report on violence against political, social and communal leaders. Six months of transformation*, September. <https://moe.org.co/a-country-without-leaders-is-not-a-country/>

“*Si perdemos la corte*” (If we loose the Court), *Reforma*, October 6.

**2019:** “*Puebla y el INE, un balance*” (Puebla and INE: a reckoning), *Revista Zócalo*, July.

“*¿Sufragio efectivo?*” (Effective Suffrage?), *Reforma*, July 15.

“*Pateando la escalera*” (Kicking away the ladder), *Reforma*, October 2.

**2018:** “*El artículo 134 constitucional. Una omisión legislativa y la injerencia indebida en las elecciones*” (Article 134 of the Constitution. A legislative omission and undue influence on elections), *Revista Voz y Voto*, January.

“*Enrique Alfaro y las libertades de expresión e información*” (Enrique Alfaro and freedom of expression and information) *Portal Aristegui Noticias*, July 18.

“*Votar en libertad*” (Voting freely), *Reforma*, June 29.

**2017:** “*Signos de preocupación*” (Worrisome signs), *Reforma*, October 25.

“*Elecciones y corrupción*” (Elections and corruption), *Periódico Excélsior*, December 6.

**2016:** “*Una respuesta a Joaquín*” (Replying to Joaquín), *Diario Milenio*, March 8.

“*¿Distinguir es discriminar?*” (Is distinguishing discrimination?), *Reforma* September 24.

“*Dilemas para la justicia electoral a la luz de la reforma constitucional político-electoral de 2014*” (Dilemas for Electoral Justice in Light of the Constitutional Reform of 2014), *Memoria del Proceso Electoral Federal 2014-2015 y Extraordinario 2015*, National Electoral Institute, December.

**2015:** “*Sobre las precampañas y más*” (On primaries and more), March, *Revista Voz y Voto*

**2014:** “*Desbloquear el modelo*” (Unblocking the model), *Reforma*, November 19.