OAS Electoral Observation Mission to Peru’s elections recommends in-depth electoral reform

April 11, 2016

The Organization of American States Electoral Observation Mission (OAS/EOM) to Peru sent 79 international visitors yesterday to visit 463 polling stations in various departments throughout the country. Two additional observers monitored the vote abroad in Virginia and Washington, D.C., USA.

On election day, the OAS Mission noted that almost all polling stations observed had the electoral materials necessary for the day’s activities. However, 91% of the stations opened late because station members arrived late. There were long voter lines inside the station, partly due to the increased number of voters per polling station, compared to the previous elections (an increase of 170 to 300). The Mission acknowledges the flexibility of electoral authorities in allowing voters who were waiting to cast their vote after 4:00 p.m. if they were outside the polling site.

Another development in this electoral process was the program “Choose Your Polling Station” (Elige tu lugar de Votación). This was an initiative to bring the vote to citizens. It necessitated changing the polling station for many people who had not requested it. The National Office of Electoral Processes (Oficina Nacional de Procesos Electorales, ONPE) instructed the voting tables to be organized by alphabetical order, instead of by the voting group indicated on the National Identity Card. These measures created confusion among voters, especially in Lima, as they had problems locating their polling station and were directed by representatives of the National Elections Board (Jurado Nacional de Elecciones, JNE) and the ONPE.

The observers reported an increase in political party representative presence throughout the day, as well as a strong law enforcement presence. They also noted the presence of national observers.

In order to streamline the voting and vote tallying processes, the ONPE implemented an electronic voting system, an automated ballot system, and a result tallying system. In the week leading up to the election, at the request of the political parties, the ONPE decided to lower the number of districts the electronic voting system would be implemented in from 30 to 19. This last minute change exacerbated the overload of voters at each polling station.
and affected the performance of station members. There were also isolated issues with the implementation of the electronic voting system.

The automated ballot system streamlined the creation and copying of the ballots, as well as the transmission of results to the ONPE tallying center. The first results were made public at 9:00 p.m., with 20% of the stations reporting (40% at 11 p.m.). The public was informed through exit polls. It bears noting that blank ballots accounted for 10.41% of the vote and invalid votes 4.56%, an increase over the 2011 elections.

During the tallying, the members of the polling stations required the constant guidance of ONPE staff, which demonstrated a lack of public knowledge surrounding the processes established for this phase of election day.

Below is a series of observations and recommendations to highlight progress and identify opportunities for improving electoral processes in Peru.

**ELECTORAL DISPUTE RESOLUTION SYSTEM**

In 2014, during the regional and municipal elections held October 5, 2014, the OAS Electoral Observation Mission noted that the mechanisms for the elimination (tacha in Spanish), withdrawal, resignation, and exclusion of candidates had created a situation in which candidates were not sure up until just a few days before the election whether they would be allowed to participate. Voters did not have reliable information until the day of the election whether their candidates would be included on the final lists. This Mission, thus, recommended “a comprehensive review of the established mechanisms, including a redefinition of the timetables provided to file and resolve any legal challenges.”

At the recommendation of the OAS following the regional and municipal elections, the JNE adopted in 2015 a regulation on candidate registration (Res. 0305-2015-JNE) to facilitate exercising the right to political participation and to enhance legal certainty (see pt. 3 of said resolution).

However, during the pre-election stage for the elections held this Sunday, there were repeated situations of uncertain candidacies, to such a degree that until Friday, April 8 – i.e. 48 hours before the election – voters were still awaiting news on the final resolution on exclusion procedures against two of the four presidential frontrunners in the polls. It could even be possible that, during the second round of presidential elections, the candidates from one or both coalitions are excluded for cases of prohibited conduct.

Against this backdrop, it is vital to recall that, in addition to the individual rights of the candidates, there is also an overarching public interest in protecting the right to vote, which could be impaired by situations like this.
Regarding the **withdrawal and resignation** of candidates registered in a timely fashion, a lack of appropriate deadlines led to a situation in which the voters saw political groupings on the ballot that were no longer in the race, resulting in voters casting their vote for candidates that were deemed invalid, as noted by the JNE in recent days (Resolution 0309-2016-JNE of 3/31/16). In this regard, the Mission recommends studying mechanisms to ensure that the candidate registration process is completed and definitive, such that once they are registered, there is no reversal, except in cases of clear constitutional or criminal violations.

Regarding the **elimination** (*tachas*) mechanism, there is a loophole in the JNE’s regulation (Organic Elections Law (LOE), Art. 110) in cases of “breach of internal democracy regulations.” As explained by the JNE (see Res. 0101-2011-JNE, 0118-2011-JNE), this arises because of the various times at which sanctions were stipulated in the LOE (1997) and political party legislation (2003 and 2009), from which the requirements stems. There is also a conflict in the internal democracy and verification processes for the eligibility requirements of candidates.

Against this backdrop, it bears noting the jurisdictional decision (Res. 197-2016-JNE) that led to the inadmissibility of a presidential candidate. Looking at this through the prism of inter-American jurisprudence explains that the obligation States have to guarantee the enjoyment of political rights “is not fulfilled by merely issuing laws and regulations that formally recognize these rights, but requires the State to adopt the necessary measure to guarantee their full exercise” (Inter-American Court of Human Rights, “Yatama vs. Nicaragua” Case, 6/23/05, par. 201). The same judgment added that “the full scope of political rights cannot be restricted in such a way that their regulation or the decision adopted in application of this regulation prevents people from participating effectively in the governance of the State or cause this participation to become illusory, depriving such rights of their essential content” (par. 204). Lastly, it notes that the regulation of rights should respect, among other things, the principle of legality, which requires “the State to define precisely, by law, the requirements for voters to be able to take part in the elections, and to stipulate clearly the electoral procedure prior to the elections” (par. 206).

As such, in the interest of the principle of legality in an issue of institutional importance, like restricting rights, the Mission recommends including in the regulation a clear, exhaustive procedural phase for the timely verification of the internal democratic method employed in the selection of candidates. The administrative and/or jurisdictional oversight should be carried out in a phase preceding the registration of groups and lists, well in advance, in order to dispel any issues that may arise. The aim is to lend speediness, certainty, and guarantees to this essential phase in the timeline. Any affected party should also have due opportunity to address the charges for which he/she has been disqualified. The current
system of eliminations provides no guarantees because it transmits legal and political uncertainty to voters and candidates.

Lastly, the recent incorporation of Article 42 of the Political Organization Law (LOP), through Law 30.414, published 01/17/2016, gave rise to new grounds for the exclusion of candidates registered in a timely fashion, as a way to sanction the prohibited conduct covered by this law. This creates a startling uncertainty, even just hours before the election, as to whether the candidates reported for violating this law will remain in the race.

In this way, the contenders and supporters are observed as using the complaint mechanism for political gain, a mechanism that should be used on an exceptional basis – just as anything that deprives someone of the right to stand for office. This creates debates that could erode the electoral institutional framework and impact the public’s trust in the effectiveness of the principle of impartiality. Feeding into this is the lack of regulation of this legal mechanism, which leads to conflicting interpretations that could be perceived by political actors and the general public opinion as electoral authorities using discretionary powers.

In addition to the objections to the timing of the entry into force of this regulation – i.e. once the electoral process was already under way and even after the registration period for candidates had closed – there are serious problems associated with the vagueness of its terms; the lack of a regulated procedure ensuring due process in the handing down of a sanction as severe as depriving someone of running for office; or the lack of a sanction scale that enables adjusting the punishment depending on the magnitude of the infraction committed, excluding a candidate from elections only for extreme cases of the utmost severity. We should not overlook the fact that the damage caused by a decision of this nature, even when there is recourse, is generally irreparable, given the urgency and brevity of the timetable of the electoral process.

Therefore, the Mission recommends that the text of the new Article 42 of the LOP be revised to expand the guarantees protecting the political rights of candidates and due process in the application of sanctions, as well as to ensure the legal certainty that should characterize all electoral processes, thereby safeguarding the integrity of the elections and public trust in the system of jurisdictional oversight over the candidates.

CAMPAIGN FINANCING

Although the Political Party Law establishes a hybrid financing system, the EOM noted that, with the exception of the radio and television air time for campaign advertising, public financing has not taken effect. This is the case because the law, in its Third Transitional Provision, predicates the disbursement of public funding on “the budgetary projections for such purposes and the forecast for the national economy.”
It bears noting that the public resources earmarked for political parties may only be used to finance training, educational, and research activities and to pay regular operating costs. The regulations, therefore, do not provide for the direct public financing of campaigns and, as such, this election was financed with private funds.

The Mission observed that current legislation does not set a cap on a party’s overall revenue, only for candidates. Neither is a cap placed on expenditures during elections, which results in asymmetrical campaign spending among the various parties. Some organizations expressed their concerns to the EOM about the inequity of the race. In addition to this, the Mission observed permissiveness in the regulations as pertains to anonymous donations for financing campaign-related activities.

At the recommendation of the Mission in 2014, the ONPE bolstered its human resources and developed technological tools to enable monitoring party funds. According to the information published by the ONPE, 11 of the 18 parties did not submit their financial revenue and campaign spending information by the deadline, and some submitted incomplete information. This failure to comply is due to insufficient party resources and mechanisms to properly account for their revenue and spending. There also are no incentives for submitting annual accounting reports, as required by law, given that the corresponding sanction is the loss of the right to receive public financing, which is not provided anyway.

Regarding the sanctions, current law establishes that they are applicable in those cases in which the electoral authority may detect revenues from prohibited sources, revenues that exceed the legal caps on individual contributions, or any omissions or falsification of the information submitted by the party. However, the legislation does not include mechanisms allowing the electoral authority to effectively collect the fines stemming from these economic sanctions.

The Mission reiterates the recommendation made in its 2014 Regional and Municipal Elections Report to regularize public funding, ensuring that it is turned over to political parties and evaluate the need for expansion to cover election campaigns. The purpose would be to strengthen the national party system.

The EOM suggests assessing the need to incorporate into legislation revenue caps on parties and election spending, as well as mechanisms to discourage and punish conduct infringing the law. It also believes it is important to revise the regulation that allows anonymous campaign contributions. To this end, the Mission recommends evaluating the inclusion of these amendments in a possible comprehensive reform of the electoral law.
CAMPAIGN COMMUNICATION

The campaign was marked by uncertainty surrounding the “elimination” process of candidates. The attention given to whether or not a candidate would remain in the race hampered interest in other proposals. Although significant efforts were made, like promoting the signing of an ethics pact and a debate among the candidates, the tone leading up to the campaign overshadowed these efforts and the discussion of platform content was minimal, while personal attacks dominated.

The system of campaign communication is two-pronged: the mandatory free air time (in both public and private media outlets) and the political parties’ ability to freely negotiate and purchase advertising space in the media. Digital campaigning is not regulated.

It bears noting that the air time for advertising is the only effective State contribution to political parties during the campaign. The Mission observed that this space is, for some parties and candidates, the only way to lend visibility to their proposals. For this reason, it is viewed as a factor that promotes equity and competitiveness in the electoral campaign.

The law allows political parties to directly purchase radio and television advertising, provided that it does not exceed five minutes per day, per channel or radio station. The purchasing of newspaper space is not regulated. The free negotiation between individuals based on supply and demand, added to the high concentration of ownership of the media, allows the more well-funded parties to obtain better conditions and advertising spaces.

The Mission recommends that the legislative proposals presented be discussed to create more equitable conditions in political campaigns, as well as encourage forums for a more in-depth discussion of the matter. Having the broadest debate possible prior to approving any amendments is important.

VOTING ABROAD

The Mission assessed the effort made by Peruvian institutions to make it possible for those living abroad to vote. There were 234 sites authorized to conduct the election in 78 countries around the world, a 13% increase over the 2011 presidential election. The registry of Peruvians abroad (884,924) is strong and growing, with a 17% increase in the voter registry over 2011. This demonstrates the significant achievement of the communication strategy deployed by the National Registry of Identification and Civil Status (Registro Nacional de Identificación y Cedulación, RENIEC), as well as the relationship that some representatives abroad have created with migrant communities.

During the pre-election stage, the EOM noted that the redesign of materials considerably reduced their volume, thereby making it easier to send them to their diplomatic and
consular missions abroad. The online training materials designed for polling station members were clear and innovative, but the Mission observed that there is no system to identify whether the members assigned to the stations abroad were trained. This prevented authorities from predicting the possible levels of member attendance at the polling sites. The absentee rate for the 2011 elections was close to 60% worldwide.

On election day, the Mission observed the electoral process abroad in the United States and monitored the process from Lima. It confirmed that the call center, set up by the Ministry of Foreign Affairs to support the consuls in their efforts, was well operated. It covered all time zones in which elections were held.

OAS observers noted that the absence of some polling site members in D.C. was resolved by appointing people standing in line, but others were solved by joining polling tables. The Mission suggests taking measures to guarantee that the members of the tables are randomly selected, without jeopardizing the training needed for carrying out the task.

At the end of election day, the Mission was present at the Decentralized Office for Electoral Processes, Central Lima 2, set up exclusively to handle the vote of Peruvians abroad. There, the Mission observed the first two tallies of ballots received electronically. Although the observation was of a small sampling of ballots, the procedure flowed appropriately.

The Mission recommends opening additional voting sites abroad and assessing the possibility of implementing the postal voting system called for in legislation that is not yet active.

**POLITICAL INCLUSION**

The Mission welcomed the fact that the three most-voted coalitions included a female candidate to the presidency or vice-presidency. The EOM also observed that the parties respected the 30% quota for female members of their lists, as established by the JNE for registering a party. It bears noting that following the elimination, withdrawal, and exclusion process, the parties do not have to replace the outgoing candidates with others of the same gender. The Mission also observed that, given that the laws do not call for alternation mechanisms or mandates for position on the list, female candidates were placed at the bottom of the list, which lowers their probability of being elected. For these elections, 77% of the lists were headed by men and only 23% by women.

The EOM calls on the future Congress to reinforce affirmative actions to promote greater participation among women and to resume the delayed projects for incorporating a mechanism for alternating genders when drawing up the lists.
With regard to the participation of indigenous and Afro-descendent peoples in elections, the law does not provide for a quota for native population for offices elected by national popular vote. It is important to mention that said quota for regional and municipal elections is 15%. For Afro-descendent groups, there is no quota at any level. The Mission recommends consideration of incorporating affirmative measures to promote the political participation of indigenous and Afro-descendent peoples.

The arguments presented above highlight the need to carry out a comprehensive reform of the laws regulating the electoral system, as put forward by electoral bodies and civil society organizations.

Lastly, the Mission noted that the minutes for the March 9 special session of the National Executive Committee of the Peruvian Nationalist Party were signed by its president and the President of Peru, acting as a member of the party. The institutional relationship between the State powers should always maintain the proper independence guaranteed by the Constitution. The pressures and value judgments among State bodies impact the trust placed in institutions. The Mission reiterates how important it is for the electoral institutional framework in Peru to maintain the independence enshrined in the Constitution.

The Mission takes this opportunity to again condemn the attacks that led to the death of 10 people in Junín the day before the election.

The Mission would like to thank the electoral authorities and its staff, as well as the Peruvian people, for their openness. This made it possible for the experts, coordinators, and international observers to carry out their work. The Mission also acknowledges the contributions of Bolivia, France, Spain, and the United States, which allowed it to deploy this high-level technical mission and have a national presence in Peru.

The OAS Electoral Observation Mission would like to thank the Government of Peru for its invitation to observe this electoral process and announces that it will deploy another team to observe the second round of the presidential elections to be held June 5.