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REPORT TO THE PERMANENT COUNCIL¹
Electoral Observation Mission – Peru
General Elections and Second Round of Presidential Election
April 10 and June 5, 2016
Presented by: Sergio Abreu, Chief of Mission

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BACKGROUND

On December 30, 2015, the government of Peru, at the request of that country's National Elections Board, extended an invitation to the General Secretariat of the Organization of American States (OAS) to deploy an Electoral Observation Mission (EOM) for the general elections of April 10, 2016. The OAS General Secretariat responded in the affirmative and the Secretary General, Luis Almagro, appointed Dr. Sergio Abreu as Chief of Mission. In the general election, Peruvian citizens would elect the President of the Republic, two Vice Presidents, 130 members of Congress, and Peruvian representatives to the Andean Parliament (5 regular members and 10 alternates).

In this electoral process, 22,901,954² citizens were eligible to vote, 884,924 of whom were on the electoral rolls of Peruvians living abroad. Of the total number of voters, 11,537,364 were women and 11,364,590 men. For the presidential elections, of the 19 candidates that applied for registration, only 10 participated in the April 10 elections. These figures point to the uncertainty created in the pre-election stage by the system to contest (*tachas*), withdrawal, resignation, and exclusion of candidates.

It should be mentioned that in 2014, the OAS Electoral Observation Mission (for the regional and municipal elections held on October 5 of that year) noted that as a result of the procedures to contest, withdrawal, resignation, and exclusion of candidates, there were some candidates who until just a few days before the election were not sure whether they would be allowed to participate, and voters who

¹ Presented on July 27, 2016, by Dr. Sergio Abreu, Chief of Mission.

² Data based on the electoral rolls approved on January 21, 2016.

up until the day of the election did not have reliable information as to whether their candidates would be included on the final lists. At that time, the Mission recommended “a comprehensive review of the established mechanisms, including a redefinition of the timetables provided to file and resolve any legal challenges.”

GENERAL ELECTIONS

The Mission was made up of 81 observers (54.3 percent men and 45.7 percent women) of 23 nationalities. Observation efforts involved a comprehensive analysis of the process on key issues such as electoral organization and technology, political and legal analysis, campaign financing, gender, participation of Afro-descendant and indigenous voters, the news media, dispute resolution, and voting abroad.

Pre-Election Stage

A delegation led by the Chief of Mission carried out a preliminary visit to the country on March 14-16, 2016. During that visit, the Agreement on Observation Procedures was signed with the National Elections Board (JNE), guaranteeing the OAS/EOM access to the information and facilities it would need to carry out its observation. In addition, the OAS/EOM leadership held meetings with the head of the National Office of Electoral Processes (ONPE) and the National Registry of Identification and Civil Status (RENIEC). A meeting was also held with the President of the Council of Ministers, Pedro Cateriano, as well as with candidates, political actors, and representatives of civil society.

The campaign was marked by tension and uncertainty over whether or not candidates would be able to continue in the race. While some efforts were made to focus the discussion on the issues—such efforts included the signing of an ethics pact and a debate among the candidates, which the OAS/EOM attended—the discussion was not focused on the candidates’ platforms.

In this context, the Mission noted that the minutes of the March 9 special session of the National Executive Committee of the Partido Nacionalista Peruano were signed by its president and the President of Peru, acting as a member of the party. The institutional relationship between State powers should always maintain the proper independence guaranteed by the Constitution. Pressures and value judgments among State bodies affect the trust placed in institutions.

Another element of tension during this period was the implementation of the electronic voting system, which was intended to streamline the voting and the vote tallying process. Under current law, the ONPE must gradually expand the use of this method of voting. For this process, electronic voting had been planned for 30 electoral districts; in other words, 13.2 percent of voters would cast their ballots using machines. Five days before the elections, the ONPE decided to reduce to 19 the number of districts using the machines, which had an impact on how 3.2 percent of the electorate would vote. This decision aimed to contribute to the atmosphere of trust necessary to incorporate technology into the voting process.

The day before the election, an attack on a military patrol in the Junín region caused the death of 10 people, including civilians and members of the armed forces who were on their way to provide security

at polling sites.³ The Mission condemned this attack and sent its condolences to the family members of the victims.

Election Day

On the day of the election, the OAS/EOM deployed 79 international experts and observers to visit 463 voting centers in various departments throughout the country. Two additional observers monitored the voting abroad, in Virginia and Washington, D.C.

The Mission noted that almost all the polling stations it observed had the electoral materials necessary for the day's activities. However, 91 percent of them opened late because polling station members did not arrive on time. This situation had been observed in previous elections. A system must be designed to give people the incentive to fulfill their duties as polling station members within the specified time frames, or some type of mechanism must be found to prevent delays in the opening of polling stations.

There were long lines of voters inside voting centers, partly due to an increase in the number of voters per polling station compared with previous elections. In that regard, the Mission acknowledged the flexibility of the electoral authorities in allowing voters who were waiting in line to cast their ballots after 4 p.m., even if they were outside the polling site.

Another new development in this electoral process was the program "Choose Your Polling Site" (*Elige tu lugar de votación*), an initiative to bring the vote to citizens. Its implementation necessitated a change in polling site for many people. In addition, the ONPE instructed that polling stations should be organized by alphabetical order instead of by the voting group indicated on the National Identity Card. On top of that, an error in how the alphabetical lists were set up made it even more difficult for people to find their polling stations. These measures created confusion among voters, especially in Lima, as they had problems locating their polling station and had to be directed by representatives of the JNE and the ONPE.

The observers reported that the presence of political party representatives increased as the day went on and that there was a strong law enforcement presence throughout the day. They also noted the presence of national observers.

The reduction in the number of districts in which electronic voting was implemented—a last-minute change—exacerbated the excess of voters at each polling station, since the stations designated for electronic voting had more voters than the manual ones. This situation affected the performance of polling station members. There were also isolated issues observed in the implementation of the electronic voting system, such as problems in inserting voter activation cards into the machines.

During the tallying of votes, the members of the polling stations required the constant guidance of ONPE staff, which demonstrated a lack of knowledge of the processes established for this phase of election day. The automated ballot system, for its part, 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 percent of stations reporting (40 percent at 11 p.m.). The public was informed through exit polls.

³ Source: Official press releases from the Joint Command of the Armed Forces of Peru: <http://www.cffaa.mil.pe/comunicado-oficial-n-010-2016-cffaa/> and <http://www.cffaa.mil.pe/comunicado-oficial-n-009-2016-cffaa/> (links last consulted on July 13, 2016).

Post-Election Stage

Since no presidential ticket obtained more than half of the valid votes cast, a second round of the presidential election was scheduled for June 5. The candidates who went to the second round were: Keiko Sofía Fujimori Higuchi and José Chlimper Ackerman of Fuerza Popular, who obtained 39.86 percent of the valid votes cast; and Pedro Pablo Kuczynski Godard, Martín Alberto Vizcarra Cornejo, and Mercedes Rosalba Aráoz Fernández of Peruanos por el Cambio, who obtained 21.05 percent of valid votes.

In terms of the composition of Congress, Fuerza Popular obtained 73 seats; Frente Amplio, 20; Peruanos por el Cambio, 18; Alianza para el Progreso, 9; Alianza Popular, 5; and Acción Popular, 5. Of the 130 seats, only 36 are held by women. While this Congress has more female members than ever before, the number of seats held by women is still below 30 percent.

In the case of the Andean Parliament, Fuerza Popular won 3 seats; Peruanos por el Cambio, 1; and El Frente Amplio por Justicia, Vida y Libertad, 1. None of those elected to the regular seats is a woman.

SECOND PRESIDENTIAL ELECTION

Pre-Election Stage

Unlike the previous campaign, this one was focused on the candidates. The National Elections Board, along with civil society organizations, organized three debates, which allowed citizens to have more information about the candidates' proposals. However, a large part of the discussion revolved around personal attacks.

The ONPE took this Mission's observations and worked to identify the causes of the problems that were evident in the first round of the elections. It planned the implementation of some specific initiatives which were then put in place at polling sites with the most people. These included redistributing the polling stations to open up more classrooms in each precinct; redesigning the voter lists posted in the classrooms and polling sites with more accurate and visible information; and installing two voting booths per polling station to allow for simultaneous voting. In addition to that, a decision was made to keep the same polling station members who had been designated for the general elections.

In terms of the use of electoral technology, the ONPE kept the electronic voting system in the same 19 districts that had used it in the April 10 general elections. It also made improvements to the electronic voting machines by adding a guide to the slot for the voter activation card, to make it easier to insert the card properly.

Election Day

On the day of the election, the OAS/EOM deployed 74 international experts and observers (52.7 percent women and 47.3 percent men) from 21 countries, who visited 1,402 polling stations at 510 voting centers. All the stations observed by the Mission had the materials needed for voters to cast their ballots. In addition, the observers noted that the polling places were adequate and made it possible to ensure the secrecy of the ballot.

While the Mission observed delays in the set-up and opening of polling stations, the day of the voting unfolded in an orderly manner, due in large part to the improvements carried out by the ONPE. The OAS/EOM observed that the polling stations closed on time and that, in general terms, the legal

procedures of the vote tally were carried out. In addition, the Mission observed that the vast majority of the polling stations observed included the presence of representatives of both parties at the time the ballots were counted and the tally sheets filled out.

The ONPE presented the first results at 9:00 p.m., five hours after the polls had closed, and in the meantime citizens were once again informed through exit polls disseminated through the news media and not by official media. The candidates greeted their followers showing good judgment and respect for the institutional process, calling on them to wait for a pronouncement by the electoral management body.

Post-Election Stage

The presidential ticket made up of Pedro Pablo Kuczynski Godard, Martín Alberto Vizcarra Cornejo, and Mercedes Rosalba Aráoz Fernández of Peruanos por el Cambio obtained 8,596,937 votes (50.12 percent), and the ticket of Keiko Sofía Fujimori Higuchi and José Chlimper Ackerman of Fuerza Popular obtained 8,555,880 (49.88 percent). The difference between both tickets was only 41,057 votes. The Mission commends citizens and contenders for the democratic maturity they showed in awaiting the final results.

On June 28, the National Elections Board presented credentials to the President-elect and the Vice Presidents. The change in government will take place on July 28.

OBSERVATIONS AND RECOMMENDATIONS

With the constructive spirit that characterizes Electoral Observation Missions, the OAS/EOM offers a series of observations and recommendations with the aim of highlighting progress and identifying opportunities to improve the electoral process in Peru.

Electoral Justice

During the pre-election stage for the elections held on April 10, 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 of exclusion procedures against two of the four presidential frontrunners in the polls. 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 some political groupings on the ballot that were no longer in the race; as a result, votes cast for their candidates were deemed invalid, as noted by the JNE (Resolution 0309- 2016-JNE of 3/31/16). In this regard, the Mission recommends studying mechanisms to ensure that the candidate registration process is final and definitive, such that once candidates are registered there is no reversal, except in cases of clear constitutional or criminal violations.

Regarding the mechanism to **contest** candidacies (*tachas*), 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 the legislation on political parties (2003 and 2009) from which the requirements stems. Moreover, there is an overlap in timing between the process

for handling issues related to the internal democracy of political parties and the process for verifying that candidates meet eligibility requirements for office.

Against this backdrop, it is worth mentioning 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, States' obligation to guarantee the enjoyment of political rights "is not fulfilled merely by issuing laws and regulations that formally recognize these rights, but requires the State to adopt the necessary measures to guarantee their full exercise" (Inter-American Court of Human Rights, "Yatama v. 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 decisions adopted in application of this regulation prevent 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 procedures 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 and rigorous 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 presidential tickets and candidate lists, well in advance, in order to resolve 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 to contest candidacies does not offer due process 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 on 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 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 underway 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 scale of sanctions 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 every electoral process, 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 it to monitor party funds. According to the information published by the ONPE, there are problems when it comes to the reporting of both campaign spending and annual financial information by political parties and alliances. This failure to comply is due in part 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 to evaluate the need for its 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 caps on 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.

Campaign Communication

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 to 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

Peruvians abroad have the right to participate in general elections and referendums. Votes cast by Peruvians living outside the country are computed in the Lima Electoral District. This situation means, on the one hand, that a citizen who lives abroad has no influence on the mandate of a legislator who represents the voter's department of origin or last residence. The connection to the voter's region of origin (and possible return) is broken when representation falls to a member of Congress from Lima. Moreover, this could distort the equal weight of votes, as the weight of some voters is supplemented by the votes of citizens living abroad but this situation does not happen in the rest of the country. In this regard, the Mission recommends studying the possibility that the votes of Peruvians living abroad be recorded in their department of origin or last residence, or that a specific district be created to represent those who live abroad.

The Mission welcomes 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 percent increase over the 2011 presidential election. The registry of Peruvians abroad (884,924) is strong and growing, with a 17 percent 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 (RENIEC), as well as the relationship that some representatives abroad have created with immigrant organizations.

Despite efforts made to increase the number of voting centers abroad, in many parts of the world polling stations are located at a great distance from where potential voters live. The Mission recommends opening additional voting sites abroad and assessing the possibility of implementing the postal voting system called for in legislation but not in effect.

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 no system was put in place to identify whether the members assigned to the polling stations abroad were trained. This prevented authorities from predicting the possible levels of member attendance at the polling sites.

On the day of the general elections, 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 station members in the District of Columbia was resolved by appointing people standing in line, but in other cases the problem was solved by combining polling stations. The Mission suggests taking measures to guarantee that members of the polling stations are selected randomly, without jeopardizing the training needed for carrying out the task.

The recording of the tally sheets from ballots cast abroad should be revised to speed up the final tally of results. While some tally sheets are transmitted via scanners and are processed, they are not recorded until they arrive in physical form. The Mission recommends finding mechanisms to speed up the computation of these votes, since in the case of very close elections the delay in receiving these ballots can generate a climate of tension.

Political Inclusion

The Mission welcomes the fact that the three most-voted presidential tickets in the general elections included a female candidate to the presidency or vice presidency. The OAS/EOM also observed that the parties respected the 30 percent quota for female members of their lists, as established by the JNE for registering a party. It bears noting that following the contest, 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.

Only 36 of the 130 members of Congress elected in these last elections are women. This shows that while the parties presented 30 percent of women on their initial lists, women will occupy only 27 percent of the seats. The OAS/EOM calls on the future Congress to reinforce affirmative action measures, in order to encourage greater participation of women, and to once again take up proposals for incorporating lists that alternate male and female candidates.

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 percent. 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 Mission reiterates 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.

Acknowledgments

Finally, the Mission appreciates the responsiveness and collaboration shown by authorities and civil servants of the government of Peru, the National Elections Board, the National Office of Electoral Processes, and the National Registry of Identification and Civil Status, as well as the various political and civil society actors who made it possible for the Mission to carry out its work.

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