



**EUROPEAN UNION
ELECTION OBSERVATION MISSION
GENERAL ELECTIONS
PERU - 2016**



PRELIMINARY STATEMENT

**A democratic and broadly accepted, although atypical, electoral process
Lima, 12 April 2016**

Summary

- A polling day without significant incidents capped a democratic process with atypical features. Voters were nevertheless able to exercise their right to vote without significant obstacles or restrictions.
- The late enactment of amendments to the Political Party Law, after elections had already been called, and without the necessary regulations detailing their implementation and clarity about its entry into force, generated an overall uncertainty throughout the electoral process.
- Under difficult and unprecedented circumstances, the decisions of the National Board of Elections (*Jurado Nacional de Elecciones*, JNE in Spanish) respected the relevant laws. However, the European Union Election Observation Mission (EU EOM) considers that by prioritising certain administrative shortcomings in a disproportionate manner, the JNE placed the fundamental right of political participation on a lower footing.
- Debates on political programmes were eclipsed by the attention given to JNE decisions on the eligibility of political parties and candidates. Throughout the electoral campaign, there were few public activities, due to the frailness of political parties and the funding difficulties encountered by many candidates. The EU EOM considers that the respect for campaign freedoms and the absence of violence are positive features of the process.
- A good degree of coordination was observed throughout the process between the three institutions responsible for electoral management, especially in a context where their legitimacy was put in question. The National Office for Electoral Processes (*Oficina Nacional de Procesos Electorales*, ONPE in Spanish) was well prepared to serve the nearly 23 million voters at the polls on election day and respected the established electoral calendar. The partial introduction of electronic voting was largely successful.
- The current provisions on political finance do not include effective monitoring and enforcement mechanisms for political party funding and campaign spending. Although the law envisages provision of public funding, this has yet to be implemented. Political parties' dependence on private funding opens the door to non-transparent practices.
- The EU EOM hopes that the confusion that was created in this electoral process following the exclusion and voluntary withdrawal of candidates will contribute to generate the necessary momentum for the new Congress to seek, as soon as possible, the broadest possible consensus regarding a comprehensive and lasting electoral reform.

Preliminary Findings

Political Background

On 10 April Peru held its fourth consecutive democratic general elections for the first time in its history. However, what was expected to be a celebration of the country's political maturity turned into the most peculiar electoral process the country has witnessed since the return to democratic normalcy in 2001.

The source of this anomaly lies in the late enactment of amendments to the Political Party Law. The law had to be applied by the JNE without regulations and with serious doubts regarding its application, after elections had been called for. As a result of these amendments, one presidential candidate and several candidates to the national Congress were excluded from the electoral contest at a very advanced stage of the electoral campaign.

Although envisaged in the law, the suspension of candidates' and political parties' rights to political participation eclipsed the kinds of debates on policy and programmes that are expected in electoral campaigns, placing the JNE at the very centre of the political debate. Criticisms from government and political party spokespersons, particularly from some of those that withdrew voluntarily from the process, contributed to this unusual situation. All political parties bear some responsibility for the confusion created by the new electoral provisions given that they were adopted in Congress with an overwhelming majority and after elections had already been called.

Legal Framework

The existing legal framework is largely in line with international and regional commitments for democratic elections subscribed by Peru.

The legal framework includes an excessively voluminous set of laws, including: the Law on Elections, the Law on the JNE, the Law on the ONPE, the Law on the National Registry of Identification and Civil Status (*Registro Nacional de Identificación y Estado Civil*, RENIEC in Spanish) and the Law for the Election of Representatives to the Andean Parliament. The calls for electoral reform, whose importance was already highlighted by the 2011 EU EOM, revolve primarily around the development of a unique, coherent and comprehensive Electoral Law. The new Congress could consider this as one of its immediate priorities.

However, the belated enactment on 17 January 2016, of the amendments to the Political Party Law, generated a wave of uncertainty that affected the entire electoral process, and which could have been avoided. This concerns in particular the vague article 42, which does not provide for any gradualism in its sanctions. Furthermore its implementation leaves a wide margin of discretion, thereby requiring *ad hoc* interpretations by the JNE throughout the electoral process, which brought about accusations of partisanship.

The law also establishes that political parties that do not reach a 5% threshold of valid votes or 6 seats in Congress in more than one electoral district will be deregistered. This exaggerated sanction encouraged political parties who deemed that they were in danger of not attaining this threshold to

withdraw voluntarily from the electoral contest up to ten days before election day, as permitted by the law.

Electoral Justice and Electoral Disputes

The JNE administered electoral justice in accordance with the law. The functional autonomy of the Special Electoral Juries (*Jurados Electorales Especiales*, JEE in Spanish) contributed to a certain heterogeneity and lack of consistency in their resolutions. This had repercussions on voters' perceptions *vis-a-vis* the predictability of decisions on electoral issues. The JNE played a valuable role as the final instance for jurisprudence.

In a very controversial decision, the JNE excluded a presidential candidate nearly one month into the electoral campaign for not fulfilling requirements regarding internal party democracy, as established in article 35 of the Constitution. The EU EOM considers that the international commitments on fundamental rights subscribed by Peru, such as the right to political participation and the proportionality of sanctions should have been respected.

Since the arrival of the Mission, 69 requests for exclusion were filed on the grounds of vote buying. Of these, four targeted the presidential candidates of Fuerza Popular, Peruanos por el Cambio, Alianza para el Progreso del Perú, and Alianza Popular. Three further requests targeted vice-presidential candidates and 62 were directed at candidates to the Congress. Three candidates were excluded by the JNE for vote buying. The EU EOM considers as well disproportionate the exclusion of 20 other candidates merely for omissions on their *curriculum vitae*.

Electoral Administration

There are three electoral administration bodies in Peru: the National Board of Elections (*Jurado Nacional de Elecciones*, JNE in Spanish), the National Office for Electoral Processes (*Oficina Nacional de Procesos Electorales*, ONPE in Spanish) and the National Registry of Identification and Civil Status (*Registro Nacional de Identificación y Estado Civil*, RENIEC in Spanish). The Peruvian election administration bodies have enjoyed a high level of credibility since the country's return to democracy in 2001. In comparison with past electoral processes, the coordination among the three bodies has improved noticeably. The uncertainty right up to, and including, election day over the eligibility of several high profile candidates put the electoral bodies in the spotlight as never before. According to opinion polls, public confidence in the JNE and the ONPE was adversely affected.

Election Preparations

The ONPE respected the established electoral calendar and was prepared to receive the almost 23 million registered voters at the polls on 10 April. The ONPE produced high quality electoral materials that were produced in-country and deployed in time for the polls. Updating the posters containing the remaining presidential tickets and the lists of congressional and Andean Parliament candidates in the 78,449 polling stations around the country was a significant challenge. The uncertainty about the final list of candidates, because of late exclusions and withdrawals, also had an effect on ballot papers, which included several candidates and lists that were no longer running. The ONPE ensured that adequate arrangements were taken at polling stations for voters with differentiated needs. The EU EOM noted that no logistical preparations were taken to facilitate the vote for electors in hospital or preventive detention.

Electronic Voting

The ONPE began to implement electronic voting in 2011. Since then, it has gradually expanded its application, in line with 2014 legislative requirements for the progressive introduction of new technologies in national-level State administrations. The planned expansion of electronic voting to 30 districts covering three million voters and 8,871 polling stations was postponed after political parties publically voiced their mistrust in electronic voting. Citing political pressures, the ONPE considerably reduced the scope of electronic voting to 2,194 polling stations, or 743,169 voters just five days before election day. The ONPE's decision contributed significantly to increase political parties' confidence at a critical point in the process.

Voter Education and Staff Training

On 7 March, the ONPE launched its voter education campaign as well as its training campaign for polling station staff, political party representatives, electronic voting system coordinators and 92,000 security forces. The national campaign and all relevant materials were in Spanish. Training and educational activities could be delivered in local languages at the decentralised level. The ONPE also scheduled radio spots in nine local languages. In addition to good quality training manuals, the ONPE also developed a wide array of training and information tools. The improved relations between the JNE and the ONPE could be further extended to civic and voter education activities, areas where a certain duplication of roles has been observed.

Voter Register

There is broad public confidence in the voter register produced by RENIEC. Political parties and voters alike consider the register inclusive and reliable. For these general elections, the ONPE introduced the possibility for voters in the Lima Metropolitan Area to select their polling centres. Nearly 30% of registered voters took advantage of this opportunity to select the most convenient polling centre.

Out-of-country Voting

The scope of out-of-country voting – which was not observed by the EU EOM – was broadened by the electoral authorities for this electoral process. The number of voters registered abroad totalled 884,924, distributed in five continents; for which 3,083 polling stations were created, managed by 18,498 polling station staff. The process is organised by the Ministry of Foreign Affairs of Peru, who transmits the relevant protocols digitally and through its diplomatic personnel, to the ONPE.

Candidate or Political Party Registration

Most of the 25 registered political parties in Peru presented candidates for the different positions that were up for election: the president, two vice-presidents, 130 members of Congress, and five members of the Andean Parliament. Following the JNE mandated exclusions and the voluntary withdrawal of some political parties from all electoral contests, the number of candidates for the presidential race dwindled from 19 to 10. Although many of the parties that withdrew voluntarily justified their decision alleging JNE partisanship, the risk of being deregistered was the main reason behind withdrawals. The EU EOM considers that the requirement to reach such a high electoral threshold is too burdensome, particularly when the procedures for political party registration are as costly and time-consuming as they are in Peru.

Electoral Campaign

EU observers followed an electoral campaign which did not feature many public events, partly due to the frailties of the political party system and the difficulties that candidates encountered in funding their campaign activities. The burden of mobilising campaign funding falls upon candidates and not the political organisation under whose banner they run for election. The lack of public funding is manifest during the electoral campaign, but also beyond electoral periods when political organisations are practically inactive.

The EU EOM deplores the murder of ten persons transporting electoral materials in the province of Huancayo (Junín) in the early hours of Saturday, 9 April. Only isolated cases of violence were reported throughout the campaign, and these did not have any serious repercussions on political parties' and candidates' freedoms of assembly, expression and movement.

Campaign Finance

Political party finance laws in Peru do not include necessary provisions to ensure a level-playing field.. There are neither legal caps on funding or campaign expenditure, nor restrictions on foreign private funding, although funding from foreign governments and agencies is forbidden, except for funds for capacity-building and research. The possibility of obtaining private funding to finance political activities, without effective control by the electoral authorities, opens the door to funding which may come from criminal or illegal activities. Although political parties are entitled to receive public funding, this has never been included in the national budget and has therefore never been implemented.

There are no effective monitoring and enforcement mechanisms in the existing political finance provisions. In general, political parties do not inform the ONPE on all their income and expenditure. This produces considerable inconsistencies between the expenditures that political parties declare and the information provided to the electoral authority. At present, the penalties for shortcomings regarding the disclosure of accounts are purely financial and the law does not establish how these penalties are to be enforced, rendering them extremely difficult to implement in practice.

The EU EOM has observed that, in general, candidates have not disclosed their income and expenditure to their own political parties, making it very difficult for the electoral authorities to monitor these contributions or identify their origin. In most of the observed cases, candidates claim to fund their activities directly from private contributions from their own personal networks, as well as, but to a lesser extent, from public fund-raising events. This state of affairs contributes to unbalanced campaigns not only between different political parties but also among candidates within a same party list.

Media

There are nearly one hundred newspapers in Peru, over 1,300 television channels and around 4,000 radio stations. Radio is the most influential means of communication. The impact of social media, frequently used by candidates, is limited, as nearly half of the population has no access to the Internet. Nearly all content in national media is in Spanish. The Constitution guarantees freedom of information and prohibits censorship. The Radio and Television Law requires impartiality from State-owned broadcasters and printed media. This requirement does not extend to private media, who are free to follow their own editorial lines. All media representatives encountered by the EU EOM noted that they could carry out their work freely. The State does not restrict the use of the Internet.

The EU EOM monitored twelve national media outlets during the last four weeks of the campaign (14 March – 9 April). The sample included four television channels (*Latina - Canal 2, América TV- Canal 4, Panamericana Televisión – Canal 5* and *TV Perú – Canal 7*), three radio stations (*Radio Nacional, Exitosa* and *RPP*) as well as five newspapers (*La República, El Comercio, Trome, Correo* and *El Peruano*).

According to the media monitoring results, the monitored State-owned media largely respected their obligation of neutrality. *TV Perú* and *Radio Nacional* broadcast interviews and debates with all competing political parties. The State-owned television channel and the three monitored private channels broadcast the debate between 10 candidates live on 3 April. The only State-owned newspaper, *El Peruano*, limited its coverage of political information and avoided political commentary.

The majority of the privately owned broadcast media made efforts to offer relatively balanced information. Between 21% and 26% of the coverage on television channels 2, 4 and 5, together with that on radio stations *RPP* and *Exitosa* was allocated to *Fuerza Popular* and its presidential candidate, Keiko Fujimori; whereas an average of 15% was allotted to Pedro Pablo Kuczynski's party; 14% to Verónica Mendoza's *Frente Amplio*, and 11% to Alfredo Barnechea's *Acción Popular*. Beyond the coverage provided to the four front-runners, the coverage dedicated to Alan García's *Alianza Popular* (14-22%) is noteworthy.

Fuerza Popular was the most heavily criticised party by the majority of monitored media, accumulating 87% of all the negative tone coverage of *La República* newspaper, 47% on *Radio Exitosa* and 44% in the newspaper *El Comercio*. On *Panamericana Televisión – Canal 5* and the *Correo* newspaper, the largest proportion of negative tone coverage was for *Frente Amplio* (41% and 55% respectively).

During the last week of the campaign, the prohibition on political parties acquiring more than five minutes of political advertising per day on radio and television broadcasters, as established in article 40 of Law 28094, was not fully respected in some instances. At least one television channel sold timeslots to political parties for the broadcast of their end of campaign rallies.

In central parts of the country, EU EOM observers reported on cases of corruption among local journalists: requests of payment for interviews and to obtain coverage, and different rates levied for political advertising. To date, the EU EOM is not aware that any sanctions have been taken against these practices. Such incidents, together with a generalised lack of substantial coverage for regional candidates to the Congress in national media outlets could have prevented many voters in different provinces from obtaining sufficient information on the various candidates.

The Participation of Women

Although there is a 30% quota for women in the Congressional lists and despite the fact that women amounted to nearly 40% of all candidates, the lack of provisions requiring alternate or rank-order placing of women candidates renders the law relatively ineffectual. Women are adequately represented in the electoral administration, including through their participation in the temporary structures of the Special Electoral Juries. *Juntas Electorales Especiales*, JEE in Spanish). There are,

however, no women among the JNE board members or within the highest leadership structures of the other two electoral bodies (the ONPE and the RENIEC).

The Participation of National Minorities

There are no legally-established ethnic representation quotas for Congress. Furthermore, the high costs of electoral campaigns are a disincentive for indigenous leaders to stand for election. The political manifestoes of presidential candidates included some proposals for the effective implementation of the freedom from discrimination and the promotion of the political rights of indigenous peoples in the national Congress.

Citizen Observation

The *Asociación Civil Transparencia* created spaces for dialogue throughout the electoral process and deployed nearly 2,000 observers on election day. *No Tengo Miedo* participated in this observation effort, focusing on giving visibility to LGBTIQ issues. Over 300 international election observers were accredited in the week before the elections, from organisations such as, the Organisation of American States, the Parliamentary Confederation of the Americas, The Carter Center, UNASUR, UNIORE, and US Embassy-accredited diplomats.

Election Day

The EU EOM's 99 observers visited 356 polling stations throughout the day in the country's 25 departments; opening was observed in 53 of these polling stations. Observers transmitted 49 tabulation reports on the operations taking place at the Decentralised Offices of Electoral Processes (*Oficinas Descentralizadas de Procesos Electorales*, ODPE in Spanish). The EU EOM consolidated information from 405 observation reports.

Opening

According to the ONPE, 99% of polling stations opened before midday.. In nine out of ten polling stations where the opening was observed, the opening was delayed, in many cases by more than an hour, because the required polling station staff was not present. Many of the polling station staff appointed through a lottery system did not turn up despite the fact that there are heavy fines for not performing these duties. In several cases, as in past elections, the ONPE had to substitute appointed staff with untrained voters queuing to vote. The EU EOM did not observe any lack of essential election materials.

Polling

Election day progressed peacefully and with a turnout of over 80%. EU EOM observers assessed the overall conduct of polling operations as “very good” or “good” in 98% of observed polling stations. Greater difficulties were observed in electronic voting polling stations as they catered for larger numbers of voters per polling station and voters took longer to cast their votes. The EU EOM observed that procedures were applied and respected with only minor exceptions. The presence of political party representatives contributed to the transparency of the process, although the EU EOM notes that they were not always present in the observed polling stations.

Closing and Counting

EU EOM observers assessed the counting process as “very good” or “good” in 75% of the observed polling stations. This assessment is largely due to the work of the ONPE coordinators who provided ongoing guidance to polling station staff throughout the day. The need to complete at least 15

electoral operations protocols and 15 results protocols was overly cumbersome for staff in conventional polling stations. The ONPE's decision to extend the implementation of its Automated Count System (*Sistema de Escrutinio Automatizado*, SEA in Spanish) to reduce errors and omissions in result tabulation protocols was very positive. Nonetheless, it was noted that polling station staff lacked adequate training. The Regulation on Electronic Voting provides an important transparency and confidence-building measure by allowing political party representatives to request a manual verification of the results before signing the results protocol.

EU EOM members observed the reception and digitalisation of result tabulation protocols in nearly half of the 60 ODPE aggregation centres. The ONPE announced almost all of the results one day after election day. The EU EOM will continue to observe the electoral process until the official proclamation of results, including the review process for protocols with errors or irregularities that have been classified as "observed" (*actas observadas*) as well as any electoral challenges.

An electronic version of this Preliminary Statement is available on the EU EOM's webpage, at www.moeue-peru.eu.
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Following an invitation by the National Board of Elections (Jurado Nacional de Elecciones, JNE in Spanish) and the Ministry of Foreign Affairs of Peru, the European Union Election Observation Mission (EU EOM) has been present in the Republic of Peru since 5 March 2016. The Mission is led by its Chief Observer, Renate Weber, Member of the European Parliament (MEP) for Rumania. Overall, the EU EOM deployed 99 observers from 26 EU Member States, as well as Canada and Norway, throughout the country, to observe the electoral process as a whole, in accordance with international and regional commitments for elections, as well as with the national laws of Peru. A Delegation of Members of the European Parliament, led by Luis de Grandes (MEP) joined the Mission and fully subscribes to this Preliminary Statement. The EU EOM is independent in its findings and conclusions and operates in accordance with the Declaration of Principles for International Election Observation, commemorated at the United Nations in October 2005. On election day, observers visited 356 polling stations in the 25 departments of Peru to observe polling, closing and counting operations. The observers also completed 49 reports on operations at the ODPE aggregation centres. In total therefore, the Mission consolidated information from 405 reports. The EU EOM will remain in the country to observe post-election developments, including the tabulation of results. A Final Report will be issued, within two months after the end of the electoral process, containing detailed recommendations. The EU EOM wishes to express its appreciation to the JNE and the Ministry of Foreign Affairs and other authorities of the Republic of Peru for their cooperation and assistance throughout the Mission's deployment. The EU EOM also expresses its appreciation to the European Union Delegation and the diplomatic missions of EU Member States in the country for their support throughout the process. The EU EOM will remain in Peru until the end of the electoral process.