



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



# **FINAL REPORT**

**July 2016**



## **Introduction and Acknowledgements**

Following an invitation by the National Electoral Board and the Ministry of Foreign Affairs of Peru, the European Union Election Observation Mission (EU EOM) deployed to the Republic of Peru on 5 March 2016 and left the country on 23 June 2016. The Mission was led by its Chief Observer, Renate Weber, Member of the European Parliament (MEP) for Romania, appointed by the EU High Representative for Foreign Affairs and Security Policy.

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 MEP Luis de Grandes for the first round and MEP Augustin Diaz de Mera for the second round joined the Mission and subscribed to its conclusions.

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. The EU EOM wishes to express its appreciation to the JNE, the ONPE, the RENIEC and the Ministry of Foreign Affairs and all other institutions, authorities, civil society and political organisations of the Republic of Peru for their kind and forthcoming cooperation and assistance throughout the Mission's presence. 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 continued support throughout the process.

## Table of Contents

SECTION I - Executive Summary and Key Recommendations .....	6
1 Executive Summary .....	6
SECTION II - Political Overview.....	11
2. The Political Landscape .....	11
2.1 Background .....	11
2.2 Main political forces.....	12
2.3 Political dialogue over reforms between 2011 and 2016 .....	13
SECTION III - Legal and Institutional Framework.....	15
3. The Legal Framework for Elections .....	15
3.1 The Constitution and International and Regional Treaties.....	15
3.2 The Electoral Laws.....	16
3.3 The Law on Political Organisations .....	17
3.4 Institutional and Administrative Framework .....	19
3.4.1 Presidential elections .....	19
3.4.2 Legislative and Andean Parliament election .....	19
4. Election Administration .....	21
4.1 The National Electoral Board (JNE) .....	21
4.2 The National Office for Electoral Processes (ONPE).....	23
4.3 Training of electoral staff.....	24
4.4 Voter Education.....	24
4.5 Procurement and operations .....	25
4.6 The National Identity and Civil Status Registry (RENIEC) .....	25
4.7 Electronic voting .....	26
4.8 Public perception of electoral management bodies and cooperation with EU EOM.....	26
4.9 Duplication in Functional Capacities between the Electoral Administration Bodies ....	27
SECTION IV – The Electoral Components.....	29
5. Electoral Justice .....	29
5.1 The Electoral dispute resolution system.....	29
5.2 Pre-Electoral cases .....	30
5.2.1 Exclusion of Presidential candidate due to irregularities with party registration – Julio Guzman Case .....	30
5.2.2 Cases of Exclusion due to Vote-Buying.....	31
5.2.3 Cases of Exclusion for false information in candidates CV’s .....	32
5.3 Post-Electoral Complaints and Appeals (10 April Elections).....	32
6. Political Finance.....	34
6.1 The Framework .....	34
6.2 Funding Sources.....	34
6.3 Campaign Expenditure .....	35
6.4 Disclosure and Reporting .....	36
6.5 The issue of illicit funding of political parties .....	37
7. Voter Registration.....	39
7.1 Legal provisions .....	39
7.2 Voter registration system and methodology.....	39
7.3 Out-of-Country Registration and Voting .....	40

7.4 Assessment .....	40
8. Nomination of Political Parties and Candidates .....	42
8.1 Procedures and eligibility .....	42
8.2 Recent amendments .....	42
8.3 Withdrawals .....	43
9. Civil Society .....	45
9.1 Civil Society .....	45
9.2 International Organizations that observed elections .....	45
9.3 The role of Churches in elections .....	45
10. Gender Issues, Participation of Women and Indigenous Groups .....	47
10.1 Women Participation .....	47
10.2 Political participation of people with disabilities .....	49
10.3 Political participation of Indigenous People .....	50
11. Media .....	52
11.1 Media Landscape .....	52
11.2 Legal Framework for Media .....	52
11.3 Respect of the freedom of the press .....	53
SECTION V - The First Round of Presidential Elections, Legislative Elections, Andean Parliament Elections .....	54
12. The Pre-Election Phase .....	54
12.1 Election environment and campaign .....	54
12.2 Media Monitoring Results .....	54
12.3 Administrative and Logistical Preparations .....	55
13. Election Day, 10 April 2016 .....	56
13.1 Opening and Polling .....	56
13.2 Closing and Counting .....	56
13.3 Results Aggregation .....	57
13.4 Role of party agents and observers .....	58
SECTION VI - The 2nd round of Presidential Elections .....	59
14. The Pre-Election Phase .....	59
14.1 Election environment and campaign .....	59
14.2 Media Monitoring Results .....	59
14.3 Administrative and Logistical preparations .....	60
14.4 Voter Education and Staff Training .....	61
15. Election Day, 5 June 2016 .....	62
15.1 Opening .....	62
15.2 Polling .....	62
15.3 Closing and Counting .....	63
15.4 Results Aggregation .....	63
SECTION VII .....	64
16. Recommendations .....	64
ANNEX I .....	70
DIGITAL ANNEXES .....	87

## **SECTION I - Executive Summary and Key Recommendations**

### **1 Executive Summary**

**1.1 Upon invitation of the National Electoral Board and the Ministry of Foreign Affairs, on 5 March the European Union deployed an Election Observation Mission (EU EOM) to observe the elections for the President of the Republic, the Congress and the Andean Parliament. This was the third time the EU sent an observation mission to Peru after the 2001 and 2011 elections. The EU EOM was led by Member of the European Parliament Renate Weber, and was present throughout the departments of Peru with 50 Long-Term Observers and a Core Team of 10 electoral specialists in Lima. For the election days, the EU EOM was reinforced with the presence of 28 Short-Term Observers from the EU diplomatic community in the country and a Delegation of the European Parliament. The EU EOM left the country on 23 June 2016.**

**1.2 The 2016 electoral process marked the fourth consecutive democratic elections in Peru, an important landmark for the country. The presidential run-off was a very narrow contest, one of the closest in the democratic history of Latin America. The results were awaited with patience by both contestants, and democratically accepted by the runner-up.**

**1.3 The first round of the electoral process was unexpectedly marked by an excessive number of challenges over candidates 'admissibility for vote buying allegations and failures to meet stringent applications of eligibility requirements, leading to the exclusion of several candidates with the electoral campaign already ongoing. The admissibility problems were due to the late enactment of amendments to the Political Parties' Law by the Congress, at a time when the elections had already been called, and the resulting lack of regulation of the mentioned law. This generated uncertainty and fuelled an unprecedented situation of chaos that led some stakeholders to severely question the work of the electoral institutions.**

**1.4 The lack of public funding makes political parties very fragile in Peru. In addition, the absence of limits on private campaign funding generates strong competition among them to offer the best positions in their lists to individuals who are not party affiliates, but have access to resources to run successful campaigns. As a consequence, many candidates, once elected through the preferential voting system, do not necessarily feel indebted or even recognize themselves with the party within which they were elected, and may easily decide to cross floors when political positions evolve or in certain cases for personal interests. In the new Congress, 100 out of the 130 newly elected members are not members of the parties they have been elected with. Most political parties in Peru struggle to perform an essential function of analysis and generation of political options and tend to function as mere administrative machineries for candidates to be elected.**

**1.5 Under difficult and unprecedented circumstances, the decisions of the National Electoral Board (Jurado Nacional de Elecciones, JNE in Spanish) respected the relevant laws in ruling on numerous challenges questioning presidential and Congress candidates' eligibility and allowed the process to move forward. However, in the EU EOM opinion, the JNE gave excessive importance to administrative shortcomings of certain candidatures over the fundamental right of political participation. Most particularly, the EU EOM considers that Julio Guzmán's exclusion from the presidential race was disproportionate, as the right to stand should have prevailed over his party's administrative failures.**

**1.6 The overall management of the process was characterized by a good degree of coordination between the three electoral institutions, especially in a context where their legitimacy was called into question. The Office of National Register of Identification and Civil Status (Registro Nacional de Identificación y Estado Civil, RENIEC in Spanish) delivered a quality voter register, and 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 in compliance with the established electoral calendar.**

**1.7 During the electoral campaign for the first round of the Presidential, Congress and Andean Parliament Elections the 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, the debate remained centred on presidential candidates. Few Congress candidates conducted public activities, due to the frailness of political parties and the candidates' own funding difficulties. The respect for campaign freedoms and the absence of violence are positive features of the process.**

**1.8 The monitored State-owned media largely respected their obligation of neutrality. The majority of the privately owned broadcast media made efforts to offer relatively balanced information. *Fuerza Popular* was the party with most coverage but also 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).**

**1.9 The current provisions on political party finance do not include effective monitoring and enforcement mechanisms for political party funding and campaign spending. The law envisages provisions for minimal public funding that remain yet to be implemented. Political parties' dependence on private funding and the lack of transparency in their tracking open the door to non-transparent practices.**

**1.10 ONPE ran effectively the logistic preparations for the 10 April elections, and produced high-quality material that was timely distributed. Voter education activities were however limited in their impact by the uncertainties on candidates' admissibility**

and late withdrawals, affecting the ability to target last week efforts. The implementation of the new electronic voting system, initially planned for 30 districts, following concerns from political parties, was then reduced to 19 districts. The partial implementation was largely successful, highlighting the importance of adequate stakeholders participation to its various implementation stages for future expanded implementation.

1.11 Election day of 10 April took place peacefully and without significant incidents. Although there was a serious incident that caused the murder of 10 persons transporting electoral materials the day before the elections in the province of Huancayo, Junín department, voters on election day were able to exercise their right to vote without significant obstacles or restrictions, despite long queues due to late opening of polling stations and absence of numerous polling station officials. ONPE handled the counting process effectively and the results aggregation at its decentralized offices process was transparent. The ensuing appeal adjudication process was rather lengthy, even though conducted with transparency and respect of fundamental rights to timely remedies and due process.

1.12 The results for the first round of the presidential election were proclaimed on 9 May, and the ones for Congress and the Andean Parliament on 30 May. Keiko Fujimori and Pedro Pablo Kuczynski passed to the second round of the presidential election with respectively 39,86% and 21,05% of the valid votes. *Fuerza Popular* obtained 73 Congress seats; *Frente Amplio*, 20; *Peruanos Por el Cambio*, 18; *Alianza para el Progreso del Peru*, 9; *Alianza Popular*, 5; and *Acción Popular*, 5. Three of the five seats in the Andean Parliament were for *Fuerza Popular*, whereas *Peruanos por el Cambio* and *Frente Amplio* obtained one each. The high electoral threshold determined that a party, *Democracia Directa*, which won 39,41% of the valid votes in the densely populated department of Cajamarca, could not get any of the five seats for Cajamarca in Congress, what contradicts the proportionality of the electoral system in force.

1.13 Women and indigenous groups remain underrepresented in public life. Only 36 women were elected to Congress falling short of the 45 seats that could have been occupied according to the legal 30% quota for women on party lists. There are no quotas for indigenous groups representation in Congress and the Andean Parliament.

1.14 The campaign for the presidential run-off placed the political actors back in the limelight. The electoral campaign was peaceful and the candidates' rights of assembly, expression and movement were generally respected. For the first time, there were three debates, two of which were celebrated outside Lima, introducing regional issues in the discussion. Though the campaign tone became at times harsh, the two presidential candidates and their respective teams could present well their programmatic plans and political priorities. The final stretch of the campaign highlighted that the overall lack of financial transparency and the limited monitoring and auditing means of the electoral authorities are structural overarching problems requiring immediate attention in the new legislature.

**1.15** The freedom of the press was largely respected throughout the electoral process. Media monitoring indicates that both candidates enjoyed broad access to national media. State-owned media largely maintained their impartiality, while private media displayed a variety of editorial lines. Keiko Fujimori's coverage in private media outlets increased in the last two weeks of the second round of the presidential elections, as did the negative tone of this coverage.

**1.16** For the second round, the JNE fulfilled its supervisory role in a transparent and effective manner, both nationally and regionally, while the ONPE carried out the necessary preparations adequately, despite seemingly emerging budgetary problems. It addressed some of the problems related to limited training and polling station locations. The implementation of electronic voting remained limited to 19 districts, upon consultation with the two contestants.

**1.17** The presidential run-off election day on 5 June took place in a peaceful and orderly environment. Citizens were able to cast their votes without any obstacles. The ONPE improved queue management and polling station opening to facilitate a smooth voting, and handled the counting process effectively. The aggregation of results was carried out in full transparency albeit proceeded very slowly, especially due to delayed reception of results from remote provinces and out-of-country ballots.

**1.18** The complaints and appeals process for the presidential run-off ran smoothly and transparently, despite initial tension due to the very narrow margin between the two contestants. Keiko Fujimori conceded defeat on 9 June, after ONPE completed preliminary results aggregation. JNE only announced final results on 28 June, with Pedro Pablo Kuczynski receiving 50,12% and Keiko Fujimori 49,88%. The blank votes were 0,815% and the invalid votes 5,673%.

**1.19** The political discussions of the immediate post-electoral period, during the last days of the Mission's presence to the country, despite the harsh campaign and the extremely narrow margin that separated the two contenders, moved on governability issues and the need for dialogue between the main contestants. The EU EOM congratulates both presidential contestants, political parties and voters for the patience and democratic spirit in waiting for and accepting the official results.

**1.20** The overall conclusion of the EU EOM observation is that Peru successfully passed the important democratic benchmark of the fourth consecutive democratic elections, a result never achieved before. Nevertheless, the Peruvian system is in need of a comprehensive and lasting political-electoral reform that could strengthen political parties and consolidate trust and confidence in the work of the electoral institutions. The EU EOM hopes that this Report can help build the necessary momentum for the new Congress to seek, as soon as possible, the broadest possible consensus on a reform touching the following broad themes:

❖ Introducing internal party democracy rules that govern the selection of candidates through political party primaries;

- ❖ **Strengthening political parties by making the provisions on public funding foreseen in the law effective and expand their application;**
- ❖ **Granting the necessary instruments and resources to the electoral authorities for an efficient and transparent oversight of political parties' public and private financing and related expenditure, also by strengthening cooperation with relevant State bodies and introducing effective gradual sanctions;**
- ❖ **Determining the eligibility of parties and candidacies sufficiently in advance to avoid suspending candidates' rights to political participation during the campaign; establishing progressive sanctions for violations of the Political Organisations Law or rules on internal democracy;**
- ❖ **Strengthening the electoral justice system by making special electoral juries a permanent and integral component of the National Electoral Board and ensure coherence in administering justice while respecting judicial independence;**
- ❖ **Systematising and consolidating the current electoral legislation in a unified and coherent electoral code to eliminate inconsistencies and legal voids. This could include a further streamlining of the role of the three electoral authorities and consolidate the enhancement of their respective institutional knowledge.**

## **SECTION II - Political Overview**

### **2. The Political Landscape**

#### **2.1 Background**

The election of President Alejandro Toledo on 3 June 2001 turned the page of the decade-long authoritarian regime of Alberto Fujimori and marked the beginning of an unprecedented period of democratic stability, with four consecutive cycles of democratic elections, the longest spell in Peruvian history. This period has been characterized by a fairly stable economic growth and peace, but also by a growing popular disaffection vis-à-vis the political elites and a progressive atomization of the political parties, still suffering from the dissolution of the Congress by Alberto Fujimori in 1992 and the ensuing weakening of political parties. President García's second presidential term (2006-2011) continued to facilitate development: by 2010, Peru reached a 7.8% growth rate, the largest in Latin America, and an inflation of 2.8%. The country's economic record, however, was marred by accusations of corruption against some of García's government members, and popular opposition to mining projects, especially in the Southern part of the country and in the Amazonian region.

For the 2011 presidential elections, Ollanta Humala and Keiko Fujimori went to the run-off. Ollanta Humala vowed to renew the country's economic model by imposing higher royalties on mining revenues, and to institute pensions for retired people, while fighting corruption. He also managed to distance himself from Venezuelan president Hugo Chávez, whose support was considered by many commentators one of the causes of his 2006 defeat by Alan García. Keiko Fujimori tried to come out from under the shadow of her father while running on his legacy, promising to deliver essential services to the country's poor and being tough on crime. During President Humala's term, Peru confirmed its economic performance, though at a slower pace than in previous years. The social reforms enacted by the government contributed to a reduction of poverty, though socio-economic differences remained high. A deterioration of security as well as the spreading of corruption, especially at the local and regional level, both connected to drug trafficking, illegal mining, and other illicit activities came to be perceived as two of the main problems.

The 2016 general elections were meant to be an uncontroversial process that would consolidate democracy in a permanent manner. While the democratic character of these elections is not to be contested, the process was however marked by unprecedented confusion with candidatures' admissibility, in great part due to the late enactment of amendments to the Political Party Law. The reforms resulted in the exclusion from the electoral context of one presidential candidate and several candidates to the national Congress.

## 2.2 Main political forces

The weakness of political parties is one of the most distinctive features of Peru's political system. They generally lack a clear ideological orientation and do not work as permanent vehicles of political action and programmatic development. This is due to several factors: firstly, Peru is the only country in Latin America, along with Bolivia and Venezuela, where there is no public funding for parties. Lacking resources, parties are not active beyond electoral periods. Even during election campaigns it is the candidates themselves who pay for their expenses. Secondly, creating a party is a long process that requires the collection of thousands of signatures, the opening of party offices and the designation of party representatives down to the district level. In exchange of sparing them the administrative hurdles to become candidates, parties offer positions in their lists to well-known public figures who have either access to funding or enough resources of their own, although they are not party affiliates. The fact that 100 out of 130 elected Congress members in 2016 were not members of the party they had run with is at the same time the consequence and a deteriorating cause of this situation. Finally, having paid for their own campaign and been elected in open lists, candidates do not feel indebted to particular parties. For them, parties are mere vehicles to be elected, and they campaign as intensely against their own parties' candidates as against other parties' candidates. After an election, elected officials have no problem in crossing floors, even before the end of their mandates'.

For the 2016 general elections, nineteen of the twenty-five officially registered parties presented candidates to Congress, whereas twenty fielded presidential candidates. The following parties won seats in Congress:

***Fuerza Popular*** (FP, Popular Force). FP is the party running with Keiko Fujimori as presidential candidate. Fujimori had run for Congress in 2006 with *Alianza por el Futuro* (Alliance for the Future), and for the presidency in 2011 with *Fuerza 2011* (Force 2011). Reportedly, FP was created to consolidate the power structure of Alberto and Keiko Fujimori's previous parties, while breaking away with the image of corruption associated with Alberto Fujimori and adopting a more progressive stance on social issues.

***Frente Amplio*** (FA, Ample Front). FA is a left-wing coalition that was born from the ashes of *Fuerza Ciudadana* (Citizen Force). It is possibly the party with the most clearly defined ideological stance in Peru. The two main political organizations belonging to FA are *Tierra y Libertad* (Land and Freedom), led by former priest and newly elected Congress member Marco Arana, and *Patria Roja* (Red Homeland). Its presidential candidate was Verónica Mendoza.

***Partido Peruanos por el Cambio*** (Peruvians for Change, PPK). The acronym of this party matches the initials of its presidential candidate, Pedro Pablo Kuczynski, who had run in the 2011 presidential election with a heterogeneous coalition of four parties called *Alianza por el Gran Cambio* (Alliance for the Great Change). Kuczynski recruited several candidates for Congress with previous experience in government. Among these and to name just a few, Martín Vizcarra, the former president of the department of Moquegua as well as Carlos Bruce

and Gino Costa, former ministers of Housing and Home Affairs, respectively, in the government of Alejandro Toledo. The party is considered to be centrist in its stance and composed of experienced technocrats.

***Alianza por el Progreso del Perú*** (Alliance for the Progress of Peru, APP). Party created in 2001 by César Acuña, the owner of three private universities who has been a member of Congress, mayor of Trujillo and president of the department of La Libertad, before being excluded from the 2016 presidential election for illegally distributing goods. It is considered to be the most successful party among those with a regional origin. As of 2016, it had 2 governors, 19 provincial mayors and 143 district mayors.

***Alianza Popular*** (Popular Alliance). Popular Alliance is a coalition of the two largest traditional parties in Peru: the centre-right *Partido Popular Cristiano* (PPC, Popular Christian Party) and the centre-left *Partido Aprista Peruano* (PAP). The parties' leaders, respectively Lourdes Flores and two-times president Alan García, had been long-time rivals before they joined forces as the coalition's vice-presidential and presidential candidates in 2016. Based on official figures from the Peruvian Registry of Political Organizations, the two parties combined reach half a million affiliates. In the 2016 elections, only PAP representatives gained seats.

***Acción Popular*** (Popular Action). Popular Action is a centrist party with two of Peru's most prestigious political leaders, Fernando Belaúnde Terry, who was president on two occasions (1963-1968 and 1980-1985), and Valentín Paniagua, who led the transitional government after Alberto Fujimori's impeachment in 2000, until Alejandro Toledo's election in 2001.

Not having obtained more than 5% of the vote, *Perú Posible* (Possible Peru, PP), the party of former president Alejandro Toledo, *Frente Esperanza* (Hope Front, FE), *Partido Político Orden* (Order) and *Progresando Perú* (Progressing Peru) lost their registration after the 2016 elections. *Democracia Directa* (Direct Democracy, DD), the party of the former president of the Cajamarca department, Gregorio Santos, managed to keep its registration after obtaining more than 5% of the vote in the elections for the Andean Parliament.

### **2.3 Political dialogue over reforms between 2011 and 2016**

Although the debate on reform of the political and electoral system has been an element of the political life for the past six or seven years, it never gathered enough political support in the Congress to become reality. In November 2011, the JNE submitted a draft Electoral Code and a Procedural Electoral Code to Congress, compiling the most important electoral norms. The Congress soon shelved the proposal. Later on, in November 2013, the three electoral authorities together (JNE, ONPE and RENIEC) presented two new draft bills, which were endorsed by civil society groups, such as *Transparencia*, the *Peruvian Press Council* and international organizations such as IDEA. Both projects were presented together to ensure that they would be debated together. Once again, the Congress rejected the proposals, which were not debated within the relevant Congress commission before being submitted to the Plenary.

Some Congress members, however, presented their own partial electoral reform proposals, and some of those were debated separately in the Congress. As a result, several amendments passed the Plenary, such as the prohibition of re-election for regional and local authorities, the non-replaceable loss of seats for Congress members convicted for drug and human trafficking, terrorism or money laundering, known as the Empty Seat (*Curul Vacía*) Law, and the creation of a centralized web repository to access information about candidates, including their criminal, tax and other administrative records, known as the *Ventanilla Única* (Single Counter) law. Other proposals were rejected, such as the elimination of the preferential vote, gender rotation in candidates' lists, the organization of parties' internal elections by the electoral authorities, or an increase in the threshold for the registration of coalitions of more than two parties by 2.5% for each additional party.

The Congress also approved some amendments to the Political Parties' Law, such as the increase from 20% to 25% in the percentage of invitees in the parties list directly designated by parties' leaderships; the increase by an additional 1% of the valid votes needed to maintain party registration for each party integrating a coalition; the allocation of public funds to parties as of 2017, which will be proportional to their election results; the loss of registration for parties which do not participate in two consecutive general elections; and the requirement that candidates who want to run with another party step down at least one year before the deadline for parties' registration.

Out of the 16 recommendations suggested to the electoral authorities by the EU EOM in 2011, only two were fully implemented, namely the elimination of ballot paper sealing to avoid delays in the counting process and the establishment of polling stations closer to voters. Both have been implemented by ONPE. Out of the remaining recommendations only the reduction of the number of result forms to be filled in by polling station members was considered by Congress. In particular, the EU EOM 2011 Final Report recommended already to the Congress to pass a systematic, coherent and integrated electoral and procedural code that would bring together the dispersed legal instruments and facilitate a consistent implementation of the law that was not taken into account.

## **SECTION III - Legal and Institutional Framework**

### **3. The Legal Framework for Elections**

The legal framework incorporates the most important universal and international democratic principles for the protection of human and political rights in its own legislation. There are no unreasonable restrictions regarding the right of political participation in public life, either as a candidate or as a voter<sup>1</sup>. Citizens have the right to elect and to revoke an elected authority, the right of legislative initiative and to propose referendums.<sup>2</sup> The right to vote is personal, equal, free, secret and mandatory until the age of 70. The opportunity to vote is ample and special attention is given to different language communities.

#### **3.1 The Constitution and International and Regional Treaties**

The 1993 Constitution ensures universal suffrage and the right to political participation for all political organisations and recognizes the principle of neutrality of the state during electoral processes.<sup>3</sup> It incorporates fundamental democratic rights such as the freedoms of religion, of thought, of speech, information, expression and reunion and association<sup>4</sup>. It also provides for the right to ethnic and cultural identity of the different minority groups while obliging the State's authorities to protect the country's cultural diversity. International treaties on human rights or sovereignty, or those involving changes to the national laws, require the approval of Congress and ratification by the President. Once ratified they become binding and are subject to implementation by the state and judicial institutions, including the JNE.

In the past, public discussions on possible amendments to the Constitution revolved around changes to the nature of the mandatory vote and the introduction of a bi-cameral Congress. In 2005, amendments to the Constitution extended the right to political participation to the military and police officers; in 2009 the number of electoral districts in Lima was enlarged to include a new electoral district and in 2015 the prohibition of consecutive re-election of regional and municipal authorities was introduced<sup>5</sup>. Changes to the Constitution require a qualified majority vote of 2/3 in Congress in two consecutive legislatures or can be brought about by referendums.<sup>6</sup>

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<sup>1</sup> The right to stand as a candidate is limited in the case of active members of the armed forces and the national police. Political participation can also be limited by judicial decision of suspension of the exercise of citizens' rights in limited cases.

<sup>2</sup> Constitution, article 17.

<sup>3</sup> Constitution, article 31.

<sup>4</sup> The Constitution integrates international treaties signed by Peru, significantly those containing international and regional principles for elections such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities. At regional level Peru is committed to the American Convention on Human Rights, the Inter-American Conventions on the Granting of Political Rights to Women and on the Elimination of All Forms of Discrimination Against Persons with Disabilities; the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter and the Indigenous and Tribal Peoples Convention

<sup>5</sup> Law 28480, 2005; law 29403, 2009 and law 30305, 2015, respectively.

<sup>6</sup> Constitution, article 206.

### 3.2 The Electoral Laws

Electoral legislation is dispersed through several laws and JNE regulations. The most relevant laws applicable for the 2016 electoral process were the Election Law, the laws regulating the three electoral bodies (JNE, RENIEC and ONPE), the political party law and the law for the election to the Andean Parliament. Several other laws were likewise relevant (see sections on Political Finance and Media Legal Framework). They are complemented by JNE regulations detailing the registration of political organisations, candidates and party lists, rules for political propaganda, state publicity and neutrality during elections, the establishment of a 30% gender quota for party lists and rules for the processing of requests for the annulment of elections among several others.

Since 2001, several partial legal amendments were passed, particularly after 2011 when the JNE submitted a draft for a new and consolidated Electoral Code to the Congress, also recommended by the 2011 EU EOM (see Chapter 2). Some of these changes contributed to improve the election process by enhancing the level of neutrality, inclusiveness and transparency, as was the case with prohibition of the use of state resources, the vote for active members of the military and police forces, the introduction of the '*Ventanilla Unica*' (Law 30322, 2015) and the law that obliges candidates to add judicial sentences, their real estate record and financial income to their CV's (Law 30326, 2015). However, the amendment did not solve all conflicting provisions and highlighted in some cases legal vacuums. For example, the lack of adequate synchronization between different phases of the electoral process led to the overlapping of operational and legal activities that affected the overall legal certainty of the process. Of particular importance is the case of the timing for the application of internal political parties' democracy rules and its related appeals period that overlapped with the candidate registration period (see section 'Electoral Justice', Julio Guzmán's case) creating an uncertainty that could have invalidated the entire process. The JNE duly highlighted the lack of adequate and synchronized timelines and recommended the review of the electoral calendar in order to allow, among other things, for the registration of candidates and the corresponding appeals period to finalise before the start of the electoral campaign. Another case concerns the possibility of exclusion by the JNE of one of the presidential candidates in the second round due to vote buying, as the law does not indicate how to proceed – whether to declare the remaining candidate elected or otherwise.

Another area in need of regulation is the exclusion of candidates due to the omission or false information in the candidates' CVs. The law does not currently establish a deadline for the acceptance of petitions for exclusion or a deadline for the JNE to determine these exclusions. While the EOM considers the veracity of information provided by candidates in their CVs' an important element of transparency and information for the electorate, it is of the opinion that the scrutiny and verification of information should ideally be finalized well before the start of the campaign, and should include proportionate sanctions for irregularities. The regulatory framework further lacks provisions concerning those citizens turning 18 after the close of the voter register. Currently there is no legal provision to allow this segment of the voting population to vote (see section 'Voter Registration').

The electoral legislation could significantly benefit from an overall systematization and regulation of all its provisions. Several key stakeholders, including the JNE and civil society organizations, agree that reforms continue to be of paramount importance in order to avoid the repetition of legal complications during the next electoral process. Apart from the need to systematise and regulate the entire legislation, the EU EOM suggests that vote buying provisions could be reviewed to introduce a measure of graduation in its application and its sanctions.

### **3.3 The Law on Political Organisations**

The most controversial aspect of the 2016 electoral process was the late enactment of the Law on Political Organisations (Law N. 30414). The Law is an amendment to the Political Parties Law (Law N. 28094), which was approved by Congress at the end of 2015 and came into effect on 18 January 2016, less than three months before Election Day. The Congress, under pressure to pass an electoral reform, hastily passed this Law with a unanimous vote, after the 2016 elections had already been called on 14 November. The adoption of the Law did not include either transitional provisions or a clear decision on whether the latter was applicable to the ongoing electoral process. Its approval after a delayed process in Congress, originated much confusion among political parties, civil society and voters. The general perception among the main stakeholders that the changes had been rushed without weighing the legal impact of their implementation, raised speculations of those changes being tailored to possibly benefit a particular party or group of parties and generated a number of unforeseeable reactions, including the massive use of the newly adopted instrument of petitions to exclude candidates for vote buying.

The late enactment of the law generated a number of unknowns, mainly in terms of the enforcement date. The JNE decided to respect the constitutional principle of non-retroactive implementation, and initially advised that the amendments were not applicable to the 2016 process. However, it was obliged to apply the newly enacted articles to the subsequent stages of the process. In particular, one very controversial change was considered as immediately applicable to the 2016 elections: article 42, a provision that prohibits direct or indirect monetary donations or the promise of it, the delivery of goods, gifts and other donations during the campaign. The undefined spectrum of cases covered by the provision, which does not provide for any gradualism in its sanctions, leaves a wide margin of discretion, thereby requiring *ad hoc* interpretations by the JNE throughout the electoral process.

The implementation of this unregulated article determined a set of problems and differing interpretations that severely strained the JNE's ability to provide electoral justice, placing the entire electoral framework to a severe test. The JNE underscored in more than one occasion the complexity and the potential dangers involved in bringing into force changes to the legal framework, at a stage where several steps of the election process had already taken place, and was caught unprepared by the political spin that the implementation of Article 42 was to generate.

On the procedural level, article 42 also opened up a wide range of discretionary interpretations for its various potential applications. Aware of the problems associated with the formulation of article 42, the JNE established a set of four guidelines to define substantial evidence, campaigning activities, direct participation and minimum punishable amount allowed in 19,70 PEN (approx. 5 EUR)<sup>7</sup> that allowed to proceed in the overall legal uncertainty. The practice of implementing legal changes to an ongoing electoral process is contrary to the overall obligation to provide legal certainty and coherence in the electoral process, a fundamental principle enshrined in article 2(2) and 2(3) of the ICCPR, as an internally incoherent national legal framework can compromise the effective protection of electoral rights. This principle is also specifically highlighted by the Venice Commission and applied by countries in the region such as Mexico and Brazil "...any reform of electoral legislation to be applied during an election should occur early enough..." or apply for future elections only to enhance legal certainty and allow for the necessary familiarization with the new rules"<sup>8</sup>. The JNE stated it was not in a position to clarify to which extent the different amended articles would be applicable to the ongoing electoral process; the Law remained unregulated and the JNE decided to pronounce itself on a case-by-case basis.

Law N. 30414 also increased the threshold for electoral alliances by 1% for each additional political party, introduced the cancellation of a political party in case of no participation to two consecutive elections both at national and regional level and increased the number of invited candidates by a party from 20% to 25% (see paragraph 8.3). One day before the 10 April elections, the JNE issued decision 371/2016 stating that the increase of the threshold for electoral alliances was not applicable, as alliances had been agreed upon before the changes came into force.

The EOM recommends that the deadline for the implementation and verification of all legal requirements regarding the registration of parties and candidates, including the observation of internal democracy rules, be concluded before the start of subsequent phases of the electoral process, especially the start of the campaign. This would allow for the respect of democratic principles, such as transparent internal elections, and contribute to avoid unjustifiable restrictions or possible violation of paramount principles, including the right to political participation. Ordinary administrative criteria and procedural electoral requirements should be designed in such a manner to avoid any adverse effect or undue limitation to fundamental rights resulting from its implementation. As for the implementation of the ambiguous article 42 of the new law on Political Organisations, aimed at constraining the widespread practice of vote-buying, the EU EOMs recommends the establishment of different types of vote buying categories that are intended to be punished and the definition of a scale of sanctions based on the nature and repetition of the violation.

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<sup>7</sup> The interpretation provide by the JNE of article 42 allowed the delivery of "goods in guise of electoral propaganda" amounting to a maximum of 0.5% of the Tax Unit (19.75 soles). Such amount was considered acceptable for different quantities of goods appreciated by most citizens, contrary to what sets forth article 356 of the criminal code, which does not set any exception.

<sup>8</sup> The European Commission for Democracy Through Law, also known as the Venice Commission, in its interpretative Declaration on the Stability of the Electoral Law (CDL-AD 2005-043). In Mexico changes to the electoral law can only be made 90 days before Election Day while in Brazil changes to the election law become applicable one year after its approval.

Throughout the entire electoral process, ambivalence and last-minute interpretations of the law by the JNE, created an atmosphere of uncertainty and distrust. The JNE and its lower levels, the Special Electoral Boards, faced the difficult task of having to rule with urgency and without established procedures over challenges submitted on the basis of open-ended provisions to curb vote-buying practices.

### **3.4 Institutional and Administrative Framework**

Three simultaneous elections are held in Peru on the second Sunday of April, namely the first round of the presidential elections, the elections of 130 Congress members, and the elections of five members of the Andean Parliament.

#### **3.4.1 Presidential elections**

The president of the country is elected by direct vote in a single nationwide district on the second Sunday of April. The presidential ticket includes two vice-presidential candidates, who can simultaneously run for Congress. If no candidate obtains an absolute majority of the valid votes, a run-off is held between the two candidates obtaining the highest number of votes within 30 days of the official proclamation of the first round's results. For the 2016 elections the second round was held on 5 June. The president is elected for a five-year term, with the possibility of seeking re-election for a non-consecutive term. Candidates to the presidency must be Peruvians by birth, at least 35 years old and in possession of their voting rights. Elected presidents take office on 28 July of the election year.

#### **3.4.2 Legislative and Andean Parliament election**

There is only one legislative chamber in Peru, the Congress. There are 130 members of Congress and five members of the Andean Parliament, elected for a five-year mandate simultaneously with the presidential elections. Congress and Andean Parliament members must meet the same requirements set for presidential candidates, except for the minimum age, set to 25. Any list of Congress and Andean Parliament candidates must include, at least, 30% of either women or men. Each elected member of the Andean Parliament has two replacements. In order to be represented in the Congress, a party needs to obtain at least six seats in more than one electoral district or 5% of the valid vote at the national level. Voters choose in the ballot two members of Congress through open lists<sup>9</sup>. The Congress' seats are allocated proportionally using the D'Hondt formula. Andean Parliament members are elected in a single national district following the same formula. Members of Congress are elected in 26 electoral districts, one for each administrative department, and one each for the Lima provinces and the Constitutional Province of Callao. Voters residing abroad are considered part of Lima's electoral district. Each electoral district is assigned one seat; the remainder is distributed proportionally to the number of voters by district. As a result, the electoral magnitude in districts can vary significantly, with departments having a number of seats much higher than its proportion of voters, a measure intended to favor indigenous and

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<sup>9</sup> In the 2016 elections, all electoral districts had at least two seats except for Madre Dios, which had one.

minority groups. As an example of the different magnitude range, Lima's electoral district, which includes voters living abroad, has 36 seats, which corresponds to one for each 213,113 voters, whereas Moquegua has two seats, one for each 66,380 voters. In general term, this principle determines that smaller departments are assigned more seats than larger ones. Other factors that may play a role in enlarging the disproportionality in the seat attribution, such as the large number of invalid and blank votes in elections to Congress (more than one third of votes cast in the 2016 elections), or the exclusion of parties that do not overcome the 5% threshold and whose seats are usually distributed among the larger parties.

#### **4. Election Administration**

Three electoral management bodies are in charge of the electoral process in Peru: the National Electoral Board (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). While these permanent bodies are autonomous, they maintain inter-institutional co-ordination in accordance with their areas of responsibility in order to ensure electoral processes are carried out in line with established regulations and timeframes; the Constitutional Court is the competent body to resolve conflicts relating to areas of responsibility. An Electoral Co-ordination Committee, comprised of highly qualified technicians as designated by the JNE President, ONPE National Chief and RENIEC National Chief, is formed when elections are called. These were the fourth general elections held under this institutional framework.

The Ombudsperson (*Defensoría del Pueblo* in Spanish) in its role of supervisor of public administration's efficiency plays a role in the supervision of the electoral process. The Ombudsperson's Office focused on supervising the neutrality, impartiality and efficiency of the electoral bodies, the political participation of vulnerable groups, such as senior citizens and special needs voters. In a statement issued on 23 March, the Ombudsperson urged the *“JNE and JEEs to rule on pending cases with urgency abiding by the democratic principles in the Constitution, to decide with rationality, impartiality and coherence. Citizens should be informed with the highest level of transparency.”* It further recognised the role of the JNE in correcting possible mistakes made by JEEs in their rulings. In the two election days, it participated with approximately 500 staff in overseeing the proper administration of the electoral operations.

The Ad Hoc Tribunal of Honour promoted the signing of the Electoral Ethics Pact<sup>10</sup> issuing several statements during the process reminding parties and candidates to abide by the rules during the campaign. Some 22 political parties, several civil society organisations, the election administration including the RENIEC and the ONPE, signed the Code, which resulted in a positive commitment and a practice to be implemented for future elections. The EU EOM could not obtain detailed information on the overall number of complaints received by the Tribunal and the overall number of statements and warnings issued.

##### **4.1 The National Electoral Board (JNE)**

The National Electoral Board (JNE) is a collegial body composed of five members to serve a four-year mandate. Members include one magistrate from the Supreme Court (appointed as President), one retired Public Prosecutor, one member from the College of Lawyers in Lima, one former dean of the Faculty of Law from amongst public universities, and one former dean of the Faculty of Law from amongst private universities. All current magistrates are

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<sup>10</sup>[http://portal.jne.gob.pe/procesoselectorales/Informacion%20Electoral/Elecciones%20Generales%202016/PactoEtico/Elecciones\\_Generales\\_2016\\_Pacto\\_Etico\\_Electoral.pdf](http://portal.jne.gob.pe/procesoselectorales/Informacion%20Electoral/Elecciones%20Generales%202016/PactoEtico/Elecciones_Generales_2016_Pacto_Etico_Electoral.pdf)

men. This autonomous constitutional body is charged with administration of electoral justice, supervision of the legality of the voting exercise, implementation of electoral processes, elaboration of voter registers, and the maintenance and custody of the political organisations register. The JNE is the final and definitive instance for decisions on appeals against resolutions issued by ONPE and RENIEC in electoral, referendum or public consultation matters.

The fact that the top management of the JNE, the Board, is elected every four years may be viewed as a possible structural weakness causing loss in institutional memory and introduction of managers that do not always have the knowledge base to satisfactorily carry out their functions. This problem was temporarily avoided as the majority of the current management served two consecutive presidencies for decision of the current Board. From July 2016 all public bodies, including the electoral authorities, must implement the minimum five per cent quota for hiring people with special needs as instituted by the 2012 Law No. 29973 or suffer the consequential sanctions.

For each electoral process the JNE establishes a number of temporary Special Electoral Juries (JEEs) composed of three members, including a High Court judge, an appointee from the Public Prosecutor's Office, and a member of the public who is appointed according to lottery by the JNE. The main functions of the JEEs are the following: Register candidates, issue credentials to party and alliance representatives, supervise the legality of the electoral process and voting, ensure compliance with JNE resolutions, administer electoral justice in the first instance, resolve challenges that arise during voting and counting at polling stations, and inform the JNE about possible electoral offences. The JNE decides on appeals for annulment of JEE resolutions. Such appeals must be filed within three days of the publication of the challenged resolution and are resolved in public audiences within three days following reception by the JNE.

Some functional weaknesses were observed in the JNE's capacity to ensure a consistent and uniform application of electoral justice. Shortfalls in implementing electoral justice may be a consequence of the temporary nature, composition and jurisdictional autonomy of JEEs. As their decision-making capacity is characterised by independence, criteria as established by the JNE are not always strictly adhered to. The EU EOM observed varying application of JNE criteria between JEEs when treating similar cases. This is a consequence of the lack of a mechanism to fully incorporate JEEs into a hierarchical electoral justice system to ensure a common approach to decision-making. The JNE raised the suggestion that the body would benefit from a permanent presence at lower levels, overseen by civil servants with professional proficiency in electoral justice. Among the good practices implemented by the JNE, the creation of a Centre for Electoral Process Operations (COPE) was a good initiative for focussing monitoring efforts over the JEEs. Also under discussion is a possible modification of the timeframes for calling of elections. At present there is a lack of coherence, as regional elections must be called 250 days in advance and general elections 150 days.

## 4.2 The National Office for Electoral Processes (ONPE)

The National Office for Electoral Processes (ONPE), an autonomous body, is the competent authority for organising and carrying out electoral processes. The ONPE National Chief, appointed for a four-year mandate by the National Judicial Council following a public competition, is the maximum authority. Those impeded from being elected National Chief include: citizens under 45 and over 70 years of age, candidates for popular election, citizens belonging to or having belonged to or held a national directorship position in a political organisation within the last four years, and members of the armed forces or national police in active service. Like the JNE, the ONPE top management is susceptible to change every four years when a new National Chief is appointed.

In organising electoral processes, the main functions of the ONPE include, design of the ballot paper, results protocols and election materials, establish the organisation of Decentralised Offices for Electoral Processes (ODPEs) and monitor their spending and functioning, train polling station members, coordinate with RENIEC preparation of voter registers, and organise the count and transmission of results. While the ONPE essentially implements electoral process, it also has the responsibility to supervise the private financing of political parties (see Chapter 6). This latter responsibility effectively creates an overlap in competencies with the JNE, which is assigned by the Constitution the authority to supervise all electoral matters.

ODPEs are temporary bodies formed for each electoral process. The ONPE National Chief establishes the number, location and organisation of ODPEs in accordance with the electoral districts determined by the JNE. For the 2016 electoral process 60 ODPEs were observed to be fully functional in time to implement the elections. ODPEs are responsible for undertaking all necessary steps in preparing for the elections, including determining polling locations, distribution of polling stations, designation and accreditation of poll workers, delivery of results protocols and other election materials, dissemination of results in each polling station, and obtaining results for ONPE and sharing the same with JEEs.

Article 39 of the Electoral Law provides for ODPEs and JEEs to be situated in the same location and with a shared administration. As in past elections, this aspect was not implemented and once again there were observed communication deficiencies at this level. This was especially noticeable during the first round results aggregation process when slow and incomplete information flows between ODPEs and JEEs contributed to lengthy delays in aggregation and late proclamation of results. The second round showed an improved communication, probably due to upper level directives giving administrative deadlines for processing results and taking decisions on observed results protocols.

### *ISO Certification*

ONPE management places great emphasis on their recent attainment of the ISO (International Standard Organization) certification for Election Management Bodies (ISO/TS 17582). In practical terms, the significance of such certification is somewhat vague as when the new initiative was voted on at the ISO in 2013 and 2014, it failed to gather the qualified majority to be adopted as a “Standard” and was consequently adopted as a non-binding “Technical

Specification<sup>11</sup>. The position emphasized that the ISO-standard did not constitute a guarantee for better elections and it could not be used to validate election results. The ISO initiative has certainly value in encouraging EMBs towards improving their processes and establishing step-by-step procedures that can be verified by external auditors. On the other hand, the ISO system only certifies written procedures, but it cannot certify the actual implementation of an electoral process. An EMB can therefore attain a certification based on its written procedures, which may subsequently remain unimplemented in an actual electoral process.

### **4.3 Training of electoral staff**

On 7 March, the ONPE launched its national campaign for training of polling station staff. ONPE needed to train 463,842 poll workers for the 77,307 polling stations. EU observers followed the training exercises, which were repeated for the second round, and commented on their good quality. In addition to good quality training manuals, ONPE offered an array of virtual training products, from Apps on Google Play to web-based interfaces, which opened up viable alternative training avenues for the 50% of Peruvian population with Internet access. To compliment these efforts, only two general electoral staff training days were conducted across the country for the first round and one for the second round with deployment of over 22,000 trainers. ONPE also entered agreements with the most important national telecommunications carriers for an SMS system whereby electors could text to 6673 to know the precise location of their polling station and whether or not they were selected as polling staff. This latter tool was particularly useful as a novelty introduced for the 2016 general elections was that electors in Lima were assigned to polling stations alphabetically according to their surname instead of voting group. This permitted ONPE to reduce the number of polling stations from 107,499 in 2011 to 77,307 in 2016. Consequently many voters did not vote in the same location or at the same polling station as in previous elections, an exercise that, in absence of a massive information campaign, was only partially successful in orienting voters. The national campaign and all election materials were in Spanish, and it was reported by ONPE that at the decentralised level training activities could be delivered in local languages. The EU EOM did not observe any training activity in native language, and believes that additional efforts could be made to ensure that indigenous communities receive more electoral information in their native languages, as part of the commitments undertaken by Peru through signing the ICERD.

### **4.4 Voter Education**

Simultaneous to the training of electoral staff, ONPE conducted a national voter education campaign. While voter education materials were in Spanish, ONPE scheduled radio spots in eight local languages for the first round. As a training tool and for electors to become familiar with electronic voting (e-voting), ONPE established 53 locations across the Lima

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<sup>11</sup> The Venice Commission subsequently discussed the relevance of an ISO standard for EMBs at its December 2014 meeting. At that time, the Commission's position on ISO TS 17582 was decidedly negative: "election processes differ from country to country and there is no need for standardisation as such. ISO is not legally binding in any country."

Metropolitan Area in malls and public spaces where they could simulate the voting exercise. Political parties felt ONPE did not do enough to inform them or the electorate about e-voting procedures and requested the body double its educational efforts for the second round. ONPE operated an outreach programme to recruit youth volunteers from universities and the Peru Scouts Association.

The JNE's *Voto Informado* project aired radio and television advertisements during the final period for campaigning before both rounds. The JNE also organised debates between the presidential candidates, in cooperation with academia and organizations such as International IDEA. Debates were well structured and gave the electorate the opportunity to compare and contrast the platforms and arguments of the various candidates. This was especially true of the debates organised for the second round, which were held outside Lima for the first time in the country's history. These decentralised debates included regional concerns raised by the civil society and individual citizens. ONPE simultaneously ran voter education programming to encourage voter participation and knowledge about the political offerings. As such, a repetition of efforts between ONPE and JNE civic education programming was noticeable.

#### **4.5 Procurement and operations**

The purchase of election materials must be undertaken in accordance with procedures provided in the State Contract Law; Article 23 of the law includes special procedures for 'emergency situations' to allow for quick intervention and purchase in time-sensitive situations, such as those presented during electoral processes. The emergency mechanism allows ONPE to manage within short time frames those contracts which if not concluded might have adversely affected different stages of the electoral process. EU observers noted there were some criticisms of favouritism in awarding contracts, especially for transportation of election materials. When contracting personnel during electoral periods, both the JNE and ONPE are released from the administrative procedures provided in the State Contract Law and the Administrative Contract of Services Law. Rather they use a 'provision of services' contract, which is in line with the authority bestowed upon them by the Budget Law for the Fiscal Year 2016. This allows the electoral bodies to enter into timely contracts with temporary workers, but without the costs and responsibilities associated with permanent staff. For future electoral processes, ONPE will be sanctioned if it does not comply with the 5% threshold for hiring people with special needs. For the 2016 general elections, the EU EOM observed last minute modifications to contractual conditions for short-term staff that raised the question of the need for external auditing.

#### **4.6 The National Identity and Civil Status Registry (RENIEC)**

The National Identity and Civil Status Registry (RENIEC) is the entity responsible for organising and maintaining the only national identification registry, including updating civil status information. The National Judicial Council following a public competition appoints the RENIEC National Chief for a four-year mandate. Those impeded from being elected National

Chief include: candidates for popular election and citizens belonging to or having belonged to or held a national directorship position in a political organisation in the last four years. RENIEC, in co-operation with ONPE, is also responsible for preparing, maintaining and updating the voter register. The RENIEC produced National Identification Card (DNI) is the only valid document for voting. To carry out its mandate, RENIEC has over 400 offices across the country.

#### **4.7 Electronic voting**

ONPE began to implement electronic voting in 2011. Since then, it gradually expanded its application, in line with 2014 legislative requirements for the progressive introduction of new technologies in national-level State administrations. For the 2016 process, ONPE had planned an expansion of electronic voting to 30 districts covering three million voters and 8,871 polling stations. This plan was postponed after political parties publically voiced their mistrust in the system. The concerns were raised to EU EOM despite the fact that 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, a possibility that was fully taken advantage of by political parties. 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 to increasing political parties' confidence at a critical point in the process. An additional reason for the decision was that the ONPE had trained less than half of the necessary polling staff and only a small portion of electors were informed about electronic voting procedures. For the second round, contrary to its initial indications, the ONPE did not extend electronic voting beyond the 19 electoral districts where it had been implemented for the first round. ONPE announced that this decision followed a consensual agreement between the ONPE, the JNE and both political forces. On election days, the EU EOM observed no significant difficulties with the use of electronic voting system. In view of the planned nationwide implementation of the electronic voting system, it would be important for ONPE to set up a system of external audits to accompany all stages of the process, and disclose plans for software development through transparent procurement procedures on the overall costs of the progressive implementation costs. Such disclosure should detail diffused costs for maintenance and training.

#### **4.8 Public perception of electoral management bodies and cooperation with EU EOM**

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. A September 2015 IPSOS opinion poll revealed 83% public confidence in RENIEC, 63% in ONPE, and 50% in JNE; a

March 2016 IPSOS poll showed a marginal decline, with 62% and 48% for ONPE and JNE respectively.

The mission held regular meetings with the JNE Board and its different divisions, Register of Political Organisations (ROP). Relations were always cordial and there was open and timely information exchange, which greatly facilitated the EU EOM's capacity to understand and analyse emerging issues. The EU EOM attended public audiences at the JNE and the JEEs. The JNE participated in training sessions held for EU EOM observers. The EU EOM also met on several occasions with the ONPE National Chief and top management. Additionally, and more frequently, the mission met with ONPE technical staff. At times, the communications protocol established by ONPE, which required the mission to channel all information and meeting requests through the Manager for Communication and Corporate Relations, slowed down timely contacts. By invitation, the mission attended numerous ONPE events in the capital and across the country, including co-ordination meetings, poll workers training sessions, printing of sensitive election materials, results transmission simulations and information fairs. The ONPE participated in training sessions held for EU EOM observers.

#### **4.9 Duplication in Functional Capacities between the Electoral Administration Bodies**

In the past, the relationship between JNE and ONPE was often characterised by inter-institutional conflict. This was partly a result of the 1993 Constitution, which allocated to the new ONPE competences that had previously belonged to the JNE. This situation was aggravated with the 2003 Political Parties Law that created within the ONPE an Office for Supervision of Party Funding, as this was perceived as an invasion of the JNE's constitutional authority for electoral supervision. Co-operation between the JNE, ONPE and RENIEC improved since celebration of the 2013 local elections; an improved collaboration between the electoral bodies was observed in the 2016 general elections. However, there are areas where structural functional changes could further improve overall cooperation and avoid duplications of efforts. The mission observed three main areas where the JNE-ONPE-RENIEC functional capacities present noticeable overlaps that could be eliminated in future reforms:

- ❖ Electoral supervision and auditing: while the constitutional framework assigns JNE the authority to supervise all electoral matters, the Law on Political Organisations assigns ONPE the responsibility to monitor the private financing of political parties. The electoral system envisaged in the 1993 Constitution contemplates two election bodies, one charged with the administration of the elections to ensure independence from the executive power, and the other charged with administering electoral justice and supervising the legality of electoral processes. However, subsequent modifications to legislation have blurred the initial lines of competence and the currently assigned distribution of responsibilities between the JNE, ONPE and RENIEC may not fully reflect the original constitutional design.

❖ Electoral and civic education: the JNE undertakes two types of electoral education activities: a) training programmes for members of the three electoral bodies, through the National Directorate for Education and Civic Training (Dirección Nacional de Educación y Formación Cívica Ciudadana, DNEF in Spanish); b) electoral education programmes aimed at building civic consciousness, run by the Electoral and Governance School (Escuela Electoral y de Gobernabilidad, ESEG in Spanish). For its part, ONPE is authorised to design and carry out operational training programmes for poll workers and the electorate during electoral processes. This includes organization of polling station member and voter training campaigns, distribution of materials, relations with the media, communication with selected poll workers, and dissemination of election results. ONPE is also charged with providing technical assistance to political organisations and civil society groups.

In practice, the JNE and ONPE educational programming is aimed at the same target groups: students, youth, women and indigenous groups. The electoral authorities do not fund sustained programming aimed at strengthening democratic practices or strengthening political organisations. Where there are two election bodies in Latin America, one that administers elections and one that supervises the legal integrity of the same, the body charged with administering the elections usually has the competence for electoral education and information programming.

❖ Verification of signatures for registration of political organisations: the Political Parties Law establishes that registration of political organisations is undertaken by the JNE's Political Organisations Registry (Registro de Organizaciones Políticas, ROP in Spanish); nevertheless, the materials required for carrying out registration are issued and sold by ONPE. While the JNE undertakes the registration, both the ONPE and RENIEC are responsible for verifying the authenticity of signatures and National Identification Cards (DNI); ONPE verifies signatures and DNI for the Lists of Party Members (Listas de Adherentes), while RENIEC verifies the same for the Constitution Acts for Political Committees (Actas de Constitución de Comités Partidarios).

Apart from resulting in unnecessary repetition in efforts, the above-described duplicated responsibilities also imply needless expenditure of public money.

## SECTION IV – The Electoral Components

### 5. Electoral Justice

#### 5.1 The Electoral dispute resolution system

The 60 decentralised Special Electoral Juries (JEEs) administer first instance electoral justice. Appeals against JEE decisions are adjudicated by the JNE. JNE decisions are final on the merit; they can only be appealed in second instance for allegations of violation of the due process. The institutional design does not allow for judicial review by a different jurisdictional body. The Constitution prohibits any further appeal regarding decisions taken by the JNE: however, in defense of fundamental rights, the Constitutional Court issued jurisprudence with supporting arguments to allow for a constitutional review.

The dispute resolution system offers ample opportunity at several stages of the election process to identified stakeholders or party agents to present petitions (*tachas*). Petitions are allowed for the selection of polling station members, registration of candidates, registration of political organisations, among other instances. The timeframes to present petitions and deadlines for JNE decisions vary, but are usually short and within three to five days. In some instances, the petitioner is required to deposit a specified sum as criteria for acceptance of the petition<sup>12</sup>. The EU EOM considers that special attention should be given to the swift and timely adjudication of *tachas* and appeals in order to avoid adjudications to affect subsequent phases of the process, especially registered candidates while campaigning. The Electoral Law could in the future be developed to include other causes for petition such as *tachas* against political organisations for violating internal democracy requirements.

The massive use of petitions ex art 42 in the 2016 process highlighted more than in previous elections the lack of institutional unity between the JNE and its 60 JEEs. The EU EOM believes that this structural limitation is at the core of the inconsistent and at times conflicting rulings that contributed to spread uncertainty in the electoral campaign. The magistrates assigned to different JEEs do not feel as part of the same institution, and even less, as dependent on the JNE. They are temporarily assigned to these bodies to perform electoral justice task, and such assignments are not considered particularly prestigious among magistrates, oftentimes determining a lack of interest and limited electoral law knowledge that would instead be desirable. The temporary nature of the assignment does not contribute to enhance the necessary sense of ownership and foster a common understanding of electoral justice principles.

The decisions taken by the JNE and JEEs in the electoral campaign were at the centre of discussion and concern among political parties and civil society especially during the period before the first round elections. The functioning of the JNE and JEEs mirrors the *modus operandi* of the judicial courts with autonomy at the different levels of jurisdiction where

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<sup>12</sup> In the case of a petition against the registration of a political party, political group or alliance, article 102 of the Election Law requires a deposit of 19,750 PEN, the equivalent to 5,200 EUR. This deposit is returned in case the petition is accepted.

each judge applies the law according to its own interpretation and within its discretionary powers. While the autonomy of the judiciary is essential to guarantee its independence, the possibility of 60 different decisions by JEEs on the same matter originates a perception of conflicting decisions and lack of institutional unity within electoral justice mechanisms<sup>13</sup>.

## **5.2 Pre-Electoral cases**

In the lead up to 10 April elections, a significant element of instability was generated by the late petitions for exclusions of candidates accused of vote-buying and omission of information in their CVs. In both cases the provided sanction is directly the exclusion of the registered candidate, which can occur up until Election Day in the cases of vote buying and up until 10 days before in the case of incomplete CV data provisions. The EU EOM considers that the lack of graduation and proportionality criteria for the sanctions was an element that greatly perturbed the pre-electoral period and would need to be eased. The JNE shared the opinion that these sanctions of exclusion are disproportionate and should in the future be reviewed to introduce gradual sanctions. The EU EOM participated to the majority of sessions held by the JNE and often observed at the JEE level as well and observed transparency and constant access to information.

### **5.2.1 Exclusion of Presidential candidate due to irregularities with party registration – Julio Guzman Case**

The pre-electoral case that attracted the most attention at national and international level was the JNE decision to exclude the party *Todos por el Peru* (TPP) from all electoral races, including the presidential ticket led by Julio Guzmán. The JNE, in its final decision taken by the controversial majority vote (3-2), concluded that TPP did not comply with its own internal rules and was therefore not entitled to register candidates for the 2016 general elections. The JNE President voted against the majority of the Board, underlining in his dissenting opinion the need to ‘fully evaluate the party’s decisions and avoid an unreasonable and disproportionate impact’. The controversial majority vote taken by the JNE in this case cast a light on the divergent interpretations of the two constitutional principles under discussion. The majority of the JNE Board prioritized the strict legal adherence to the law and considered the requirements of internal democracy of constitutional nature, which had to be fully respected. The minority (including the JNE president vote) underlined instead the constitutional right and internationally recognised principle of political participation, both as the right to stand and the right of the electorate to vote for the candidate of their choice. The two JNE dissenting members, in detailing the reason of their vote in the official decision, recognised TPP’s weak organisational structure, as the party was unable to implement its own by-laws in an efficient and timely manner. The following degrees of judgment before the JNE did not alter the decision, and no appeal to Constitutional tribunal was submitted. However, Guzmán lodged a request for a provisional and precautionary measure before the Inter-American Commission of Human Rights on 17 March which is still pending.

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<sup>13</sup> The Ombudsperson’s Office, in a statement issued on 23 March, urged the “JNE and JEEs to rule on pending cases with urgency abiding by the democratic principles in the Constitution, to decide with rationality, impartiality and coherence. Citizens should be informed with the highest level of transparency.” It further recognised the role of the JNE in correcting possible mistakes made by JEEs in their rulings.

### 5.2.2 Cases of Exclusion due to Vote-Buying

There were a total of 67 cases for exclusion of candidates from all electoral races, based on article 42 of the Law on Political Organisations, which exposed weaknesses in the regulation on political organisations and a lack of preparedness within the electoral justice structures to deal consistently in its first and second instance rulings. Instances for candidates' dismissals for vote-buying allegations were submitted up to Election Day<sup>14</sup>. In order to prevent further submission of cases related to vote-buying allegations, the JNE decided to use as a precedent a Constitutional Court's ruling from 2012 whereby, after Election Day, newly elected candidates cannot be excluded by subsequent JNE decisions that refer to the pre-electoral period<sup>15</sup>. As such, the ruling stated that the delayed timing of JNE decisions could no longer adversely affect voters' choices after election day.

The application of article 42 caused the disqualification of one presidential candidate (APP's Cesar Acuña, see below), a vice-presidential candidate (FP's Vladimiro Huaroc) and one Congressional candidate (PPK's Mauricio Vila) for donating money and goods in the middle of campaign events. However, the biggest controversy involved FP's presidential candidate Keiko Fujimori (see below).

#### *César Acuña's Case*

A judicial case of significant media resonance concerned the presidential candidate César Acuña, former regional governor of La Libertad and leader of *Alianza para el Progreso del Perú* APP and founder of Cesar Vallejo University. The JNE excluded the candidacy of Cesar Acuña for cash handouts to citizens on 8 February in Piura and 10 February in Lima, as part of his election campaign. The allegations were recorded on a video that circulated on Internet and was confirmed by the Office of National Control and Electoral Processes of JNE on 22 February 2016. Mr Acuña was subsequently declared ineligible to stand on 4 March by the Special Electoral Jury (JEE) of Lima 1, which unanimously ruled that Mr Acuña violated article 42 of the Law on Political Organizations for vote-buying. Mr Acuña appeal before the JNE to revert the JEE's decision was not successful. In a final attempt to reverse the decision, APP presented an extraordinary appeal for violation of due process, which was found as not grounded by JNE on the following day. Mr Acuña's lawyers filed an appeal to the Inter-American Court on Human Rights. The decision on Mr Acuña's case, while generally considered appropriate on the basis of the evidence that was submitted, had a considerable media resonance for the rumoured similarities to another case of alleged vote-buying, involving FP's presidential candidate Keiko Fujimori.

#### *Keiko Fujimori's Case*

Ms Fujimori was accused of handing out monetary donations and merchandise to supporters at a dance competition organised by an association close to her FP party, *Factor K*. The JNE

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<sup>14</sup> Two petitions were lodged at the JNE on 10 April: one against presidential candidate Alan García and a second against Pedro Pablo Kuczynski, both were not considered admissible.

<sup>15</sup> The Peruvian Constitutional Court ruled at 2012 that the JNE should apply the legal principle of "preclusion or stoppel" for acts and its relation to electoral deadlines, and therefore do not receive requests for exclusion of candidates after the deadline stipulated by law. Please see: <http://www.tc.gob.pe/jurisprudencia/2012/05448-2011-AA.html>

dismissed the case stating that the monetary donations were not directly attributable to Ms Fujimori and it was therefore not possible to determine an infringement of article 42. The JNE ruling was issued by a 3-2 majority vote, with the JNE President voting in favor of maintaining Ms Fujimori's candidature. The JNE ruled also against an appeal demanding her exclusion.

In the ruling, the JNE President underlined the Congress' responsibility for passing at such a late stage in the process the controversial changes to the Law on Political Organisations, reiterating the difficult role that JNE was asked to perform by a new law that was issued without a regulation and entered into force after the elections had already been called. Further, the decision also reaffirmed that only the JNE can interpret the law and that the JEEs are bound to respect issued guidelines.

### **5.2.3 Cases of Exclusion for false information in candidates CV's**

According to article 23 of the Law on Political Organisations, all candidates are obliged to provide detailed CV's to be posted on political parties' and the JNE web pages for public consultation. The EU EOM observed that several JEEs scrutinised with different approaches candidates' CV's for inaccurate or missing information, including judicial convictions of a specific nature. Before the 10 April elections, some 24 candidates for Congress were excluded by the JNE. For the second round, the accuracy of information contained in PPK presidential candidate's CV was challenged. The JEE Lima 1 dismissed the case. While some JEEs applied the law rigidly and excluded candidates based upon verification of the infractions, others allowed candidates the opportunity to present additional proofs or missing documentation. Excluded candidates could be replaced until the end of the deadline for the registration of candidates on 10 February. The exclusions of candidates close to elections introduced an additional element of uncertainty and could be partially avoided with a timely verification, by the JEEs and the political parties of data in the CVs.

### **5.3 Post-Electoral Complaints and Appeals (10 April Elections)**

ONPE reported that 20,500 results protocols were observed and sent to the corresponding JEEs for adjudication. Results protocols are observed in case of arithmetic mistakes, illegibility or when the validity of a vote is challenged during counting among other causes. The JEE's either accepted or invalidated the results protocols. Out of a total of 70,000, only 1,032 concerned the presidential elections while the majority were Congress results protocols.

The adjudication by the JEE's regarding results protocols can be appealed to the JNE, with the exception of decisions on challenged votes which were decided in public audiences at a second instance at JEE's. The JNE adjudicated 270 appeals for the first election. The majority of them, some 184 were against decisions on observed results protocols. The JNE also reviewed 20 extraordinary appeals in regard to the violation of due legal process within the legal timeframe. All extraordinary appeals were dismissed by the JNE.

### Decisions of the JNE - 10 April 2016

TYPE	SUB-TYPE	NUMBER OF DECISIONS
General Elections 2016	Appeal against Results Protocols presented at Polling Station	1
	Appeal against Observed Result Protocols	184
	Appeal against Annulment of Election Results in Electoral Districts	1
	Appeal against Polling Stations	2
	Request	1
	Complaints	61
	Extraordinary Appeal against JNE decisions (violation of the legal due process)	20
<b>Total Number of Decisions taken by the JNE</b>		<b>270</b>

Source: JNE

#### **Post - Electoral Complaints and Appeals (5 June Elections)**

For the second a round the number of observed protocols was significantly lower. A total of 1,637 out of 77,307 results protocols were observed and sent to JEEs for adjudication. This is party due to only one election results protocol at polling stations which was easier to fill out and thus also resulting in less arithmetic mistakes. The approximately 409 protocols observed for challenged votes were resolved at the second instance by the JEEs. The JEE's annulled some 341 protocols and those votes were subsequently invalidated while 877 protocols were validated.

The JNE concluded the revision of a total of 313 appeals on 14 June. *Fuerza Popular (FP)* filed some 295 appeals while 18 appeals were presented by PPK. The majority of appeals were presented from the Lima region with 40% and adjacent Callao with 12%, two of the most populous areas in the country. FP's lawyers were absent at the JNE public audiences. The JNE decided on all appeals against JEE decisions and parties within the legal timeframe. No extraordinary appeals were filed.

JNE rulings on appeals were up-loaded to the JNE web page. Most of them confirmed the first instance JEE's rulings. Decisions of these adjudications were returned to ODPEs and JEEs for tabulation and announcement of results. The JNE offered credentials to the newly elected president and the two Vice-Presidents on 28 June.

## **6. Political Finance**

### **6.1 The Framework**

The Political Party Law (N ° 28094) provides for a mixed financing system of public and private funding. Important components of the systems are provided by the Regulation of Financing and Supervision of Party Funds no. 060-2005-J/ONPE and the Law on the Political Organisations (N°30414). The direct public financing for political organisations, envisaged in the law as necessary both to strengthen political organisations and provide greater autonomy, has never been implemented. On the other hand, while there are limitations on individual donations, there are no thresholds on political parties' expenditure. The combination of these factors generates imbalances and opens the door to illicit contributions to politics. In this framework it is important to mention Article 42 of Law 30414, an amendment that, as described in Chapter 3 was hastily passed when the elections had already been called, and that remained unregulated. The provision was a populist measure passed to curb the most manifest forms of vote buying. However, it generated much uncertainty but did not address the underlying problems of political finance.

This new uncertainty, coupled with the chronic lack of transparency, monitoring and accountability measures in the legal framework elevated the current political party funding system to one of the main issues in the 2016 electoral campaign. The framework does not indeed provide for either legal caps on funding or campaign expenditure, or restrictions on foreign private funding. There are no effective monitoring and enforcement mechanisms in the existing political finance provisions. In general, candidates do not inform political parties on all their income and expenditure. This produces considerable inconsistencies between the expenditure that political parties sustain and the information provided to the electoral authority. Despite the legal requirements for the political parties to declare their income, as well as the source and amount of funds for the campaign, the current framework is both fragile and permissive, as it does not provide either JNE or the ONPE with the proper instruments to audit and monitor the financial reports from political parties and to adequately sanction them in case of violations.

### **6.2 Funding Sources**

Political party financing in is totally dependent on private funding. Political parties have insufficient economic resources, and in non-electoral periods, they reduce drastically activities and premises.

With the amendments introduced with Law N ° 30414, political parties will finally have the right to obtain a public direct funding based on the number of votes and seats obtained in the most recent elections to Congress. No direct funding to candidates will be allowed. Funds will be received by political parties for use in training and research during the five years following an election, as well as for ordinary operating expenses but is not prohibit the use of public funds in electoral campaigns. The transfer of funds to each political party should be made at a rate of one-fifth per year, 40% distributed equally among all political parties

represented in Congress and 60% percent in proportion to the votes obtained by each political party in the election of representatives to the Congress. The law does not clarify how to proceed in cases of alliances. A form of indirect public funding during the final phase of the campaign (from 30 to two days before elections) is available through the free airtime (*Franja electoral*) allocated to political organisations by the ONPE in accordance with the equitable criteria from thirty days to two days prior to general elections day.

As for the private funding, political parties may receive resources such as the fees and cash contributions of its members or the activities of the political party and the income from their own assets, and from national or foreign individuals or companies. The contribution may not exceed the amount established by law, (60 UIT - approximately 237.000 PEN- per contributor, or 30 UIT - approximately 118.500 PEN- in the case of anonymous donor) and political parties are required to report to ONPE the list of contributors. Additionally, parties may also take out loans to finance campaign activities. Candidates are not allowed to directly receive contributions, monetary or in-kind. Political contributions should be channeled into party accounts and not individual accounts. Political parties may not receive contributions from foreign political parties and governments, except when the contributions are intended for training, education and research. However, the limitation of the monitoring mechanisms prevents from ascertaining if private funding violating the parameters described above are disbursed directly to candidates without being accounted for.

### **6.3 Campaign Expenditure**

There are no legal limits or ceilings in fundraising and campaign spending. Candidates and political parties are obliged to report the sources of finance and accounts of their campaign spending to the competent authorities. The official funding sources during the campaign are parties' legal representatives and official treasurers. Candidates may not receive funding without the party's knowledge; however, during the campaign candidates receive direct contributions which normally do not pass through the officially designed channels. As a result, candidates receive direct money which is extremely difficult to report and track down. In this campaign, candidates' self-contribution to the political party, contributions from natural or legal persons and political parties' activities such as cocktails or lotteries were the main known funding sources.

ONPE and JNE are nominally responsible for the implementation and enforcement of the campaign finance rules. In practice, they lack effective power to punish parties' omission or forgery. ONPE is responsible for the verification and control of the external economic and financial activities of the political organisations and for allocating airtime. Additionally, it imposes economic sanctions to political parties that are found in violation of the rule. The work of ONPE during the electoral process has been efficient and transparent in disseminating all the information reported to it, as well as in disclosing contributors' names. Political parties, through their legal representative and their treasurers are obliged to report their sources of funding and accounts of their campaign to ONPE, who, along with the JNE, are responsible for the implementation and enforcement of the campaign finance rules.

However, the law does not assign to ONPE sufficient monitoring and investigating powers to investigate what is not reported, and its main task remain limited to verification and accounting of reported expenditure. Although the ONPE sanctioned fines in few occasions, there is no indication that these have been collected or have generated improvements in the compliance by political parties. The electoral body has no jurisdiction to conduct financial audits on political parties and the political organisations can appeal the decisions issued by the ONPE in other judicial bodies.

#### **6.4 Disclosure and Reporting**

Political organisations are required to report detailed contributions and expenditure to ONPE, both during and outside electoral campaign periods. Political organisations must present a financial report within a six-month period from the close of each fiscal year with a list of the contributions, containing the amount of each contribution and the names and addresses of the contributors. They are also obliged to submit bimonthly reports of contributions received and expenditures made during the election campaign – a total of five reports during the first round and two reports for the second round. Political parties have one year to rectify any irregularity found in their reports. ONPE make the information publicly available through its webpage, listing the contributors' details.

Most of the political parties do not present detailed information about main individual contributors or funds from political parties' campaign activities. ONPE has found significant amounts from promotional activities and advertising expenditures that are not detailed in the party reports. In practice many candidates and political parties receive contributions that are not declared. Candidates often receive contributions directly for their own election campaigns without notifying them to their own parties, regardless of the parties' obligation to report to ONPE. While the JNE and ONPE have an agreement with the Financial Intelligence Unit (UIF) to review information about the candidates and their donors, UIF has very limited investigation prerogatives (it may only collect data related to the existence of illegal transactions, alimentary purchases or complaints). Information concerning real income as well as banking operations of the candidates or their donors fall outside the scope of the UIF review due to the constitutional protection of banking secrecy.

According to the data contained in the report ONPE published between November 2015 and April 2016, political organizations reported expenditure for more than EUR 13,725,444. The consolidated information from the reports indicates that the party reporting the highest campaign expenditure was *Alianza Por el Progreso* (APP), followed by *Fuerza Popular* (FP), *Alianza Popular* (AP) and *Peruanos Por el Cambio* (PPK). In general, APP reported the highest expenditure on TV and Radio advertising, while Solidaridad Nacional-UPP, FP, AP and PPK reported the highest expenditure on outdoor advertising. The highest expenditures on advertising in print media were reported by PPK, FP, APP and Solidaridad Nacional – UPP.

For the second round, ONPE published two reports. The consolidated information indicates that FP had an income of 2,286,846.45 PEN and expenses for 1,883,817.81 PEN, while PPK had an income of 1,451,582.40 PEN and expenses of 3,279,476.93 PEN.

Overall, the campaign costs reported by ONPE were approximately 66.423.000 PEN (approximately 16.5 MEUR). According to the statements from political organisations, publicity represents 80% of their campaign spending; the remaining 20% would seem insufficient to cover all other campaign activities. The ONPE also noted that these statements included several shortcomings. Civil society organisations, such as *Proética*, and the media offered insights that the sums presented by political parties to the ONPE regarding their financing and spending are incomplete. To continue promoting such initiatives and to further improve the development of methodologies is crucial for a better oversight of campaign financing. The *Proética* pilot project provided information on specific campaign events such as rallies and parades in few pilot cities, demonstrating the imbalance between the information stated by the parties and their own observation. The collaboration of civil society, Media and ONPE, highlighted an interesting avenue to establish a costing methodology that could make the work of ONPE in this context more effective.

Political organisations recorded vast sums of income as originating from dinners, lunches and receptions. FP, the party which disclosed the largest quantities as proceeding from this line of financing, declared 4,599.000 PEN (approximately 1.240.000 EUR) from these sources. In total, according to ONPE data, in 2016 31, 33% of FP's elections financing originated from these events. PPK declared 232.519 PEN (approximately 60.000 EUR) for this same line, representing 2.2% of its total financing. The ONPE noted that some donors to different political parties were not correctly identified.

## **6.5 The issue of illicit funding of political parties**

Private funding is a necessary resource for political parties and their candidates. The current framework of the Peruvian system however, leaves ample possibilities for the allocation of private funds to parties and candidates without any effective means of control by the electoral bodies. The lack of supervision and control is what attracts illicit funding towards politics as a means for both laundering resources and establish control over political actors.

The 2016 electoral process has been characterized more than ever by numerous allegations of infiltration of funds originated from the traffic of drugs, organized crime, illegal mining, illegal logging, and the trafficking of human beings in the financing of campaigns of parties and candidates. Such allegations increased during the campaign, involved important political actors and became a campaign topic that ultimately played a role in shaping the electorate preferences. Many investigation and conjecture exist, but there is little solid evidence or public reporting that clarifies how illicit sources of financing are used in the political life of parties and their campaigns. For sure, there are a number of factors that contribute to it: first, the institutional weakness of political parties creates the preconditions for unmonitored contacts, especially at the regional level where national parties are even less present and

many regional parties are composed of actors that are investigated or rumoured to be involved in illegal activities; secondly, the particular application of preferential voting system, with the significant emphasis it places on financial possibilities of aspiring candidates in order to be considered by the parties' leadership for a position in the ballot, implicitly encourages this type of connections. Thirdly, the overall lack of transparency in the system, with no disclosure obligations for candidates and the limited institutional controls, provide the terrain for impunity. The Financial Intelligence Unit (UIF), is part of the Supervisory Authority of Banks and Insurance (*Superintendencia de Banca y Seguros*), a public law institution with functional autonomy responsible for investigating information on money-laundering, is very limited in its actions by not having access to bank secrecy, which can only be lifted by court order. The UIF is also prevented from sharing with the ONPE its information about candidates and donors, since the Transparency and Access to Public Information Act does not apply to political parties. Finally, the ONPE sanctioning powers are very limited<sup>16</sup> and lack preventive capacity. ONPE can initiate investigation and issue financial decisions but has no jurisdiction to account and conduct comprehensive financial audits on political parties, and can only ask for financial information and support documentation according to regulations. Furthermore, lacks of fully enforcement mechanisms and has not possibility to cross information with databases owned by other institutions as the UIF, the Public Register, or the Audit Office.

While a range of sanctions should be desirable, including warnings, administrative fines, and partial or total loss of public funds, including the possibility to cancel the inscription of the political party and, in the case of significant violations, criminal prosecution, sanctions and penalties result only from administrative fines and limits of the amount of public funding. In practice, fines are not paid by the political parties, the ONPE has no competence to enforce the collection of fines, and no public funds have been distributed to political parties.

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<sup>16</sup> During the electoral process, ONPE sanctioned with a fine of PEN 395,000 (approx. EU 103,000) Alianza para el Progreso del Perú (APP), Fuerza Popular (FP) and Peruanos por el Cambio (PPK) for handing out money in the campaign.

## **7. Voter Registration**

Peruvian citizens in possession of their civil rights are obligated to vote until attaining 70 years of age. Citizens are those Peruvians who have reached 18 years of age. Citizenship may be suspended in the following cases: a) by a court resolution to suspend civil rights; b) when the individual is serving a prison sentence; c) when there is a sentence to suspend political rights. Introduction of Law No. 28480 in 2005 constituted an effort to bring the Electoral Law in line with the Constitution, permitting active members of the armed forces and national police the right to vote.

### **7.1 Legal provisions**

For the 2016 general elections, the JNE exempted voters with disabilities from the obligation to vote (by ruling they would not be fined). The EU EOM considered this exemption contrary to ensuring political participation of vulnerable individuals and existing obligations undertaken by the state in international and regional instruments (Convention of the Rights of Persons with Disabilities, CRPD and Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities). Following first round voting, the National Coordinator for Human Rights (CNDDHH) urged ONPE to implement practical measures for the second round to facilitate affected voters, including lowering of electronic voting machines for voters in wheelchairs, provision of Braille ballots for all voters who requested them including at electronic voting centres, and allowing voters at electronic voting stations to be assisted by a person of their own choice. EU observers noted some practical improvements for second round voting such as better signage and set-up of mobile polling stations for physically challenged electors.

### **7.2 Voter registration system and methodology**

The National Identity and Civil Status Registry (RENIEC) assigns a unique identification code for each natural person in a single registry and issues a National Identification Card (DNI) containing the same information. The DNI is an official document that can be used for any and all identification purposes in Peru. RENIEC is also responsible for maintaining and updating a civil status registry where it is obligatory to assign a civil status to every registered person. Based on the information contained in the single registry, RENIEC prepares a Voter Register to be approved by the JNE for electoral purposes. RENIEC shares information on special needs voters with ONPE, but this information must first be volunteered by the voter, as RENIEC has no other information source about this category of voters. The National Institute of Statistics registered well over one and a half million citizens (5.2 per cent of total population) with special needs in 2015, however only a few thousand of these electors voluntarily registered with RENIEC. As such, ONPE is challenged to provide equal and adequate services for voters with special needs.

In practice and for operational reasons, RENIEC maintains an Active Voter Register and an Inactive Voter Register. The former contains all those citizens who are registered to vote in

an electoral process, and the latter all those who, among other things and in line with Article 44 of the RENIEC Law, are not authorised to vote, including deceased electors and those with their citizenship either temporarily or permanently suspended. A total of 22,901,954 voters were registered for the 2016 general elections.

### **7.3 Out-of-Country Registration and Voting**

In the case of general elections, Peruvians residing abroad are obliged to vote, however they are given dispensation for payment of the fine. They must be in possession of a National Identification Card (DNI). Out-of-country voting is organised at Peruvian diplomatic missions and on the same date as polling in the national territory. The scope of out-of-country voting (not observed by the EU EOM) was broadened by the electoral authorities for the 2016 electoral process. The number of voters registered abroad total ed 884,924, distributed in five continents for which 3,083 polling stations were installed and managed by 18,498 polling station staff. The process is organised by the Ministry of Foreign Affairs, which transmits the relevant protocols through its diplomatic personnel to the ONPE. This manual delivery of results protocols from abroad is partly responsible for the several day delay in aggregating election results.

### **7.4 Assessment**

There is broad public confidence in the voter register produced by RENIEC. Political parties and voters alike consider the register inclusive and reliable. As the register closes 120 days before Election Day and there is no mechanism to include those who come of age in the interim period, RENIEC estimates that 112,000 potential voters were effectively disenfranchised, an anomaly that could be easily corrected. The voter register does not also allow for any new registrations between the two presidential rounds. 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. RENIEC offices remained open seven days a week and up until the end of polling on 10 April and 5 June to facilitate electors who, due to loss or damage, requested DNI replacement (the only valid document for voter identification). As in past elections, there was a last-minute JNE resolution allowing those with an expired DNI to vote.

There were two main shortcomings associated with the out-of-country voting exercise: 1) ONPE provides electoral logistics and support to the Ministry of Foreign Affairs, however diplomatic staff and poll workers were not always prepared for the tasks; 2) participation of selected poll workers is mandatory, but as for voters there is dispensation for payment of the fine, resulting in great difficulties in recruiting polling staff to administer elections.

In a collaborative effort, the electoral bodies made a decisive effort to limit last-minute transfers of residence. In past local elections, political parties and candidates often transported residents of one district to be registered in another in order to affect the outcome

of local elections (phenomenon known in Peru as *electores golondrinos*). This mainly occurred in sparsely populated districts with large mining activity, where losing candidates often petitioned to nullify the elections. In August 2015, Congress approved Law No. 30338 (put forth by the JNE), which forbids changes in electoral residence during a 240 rather than a 120-day period prior to election day.

## **8. Nomination of Political Parties and Candidates**

### **8.1 Procedures and eligibility**

Article 35 of the Constitution establishes that political parties are vehicles for the exercise of citizens' rights. It further establishes that registration is a means to give them legal entity, as regulated by the 2003 Political Parties' Law. The law distinguishes between political parties, regional movements and local political organizations. Only political parties can participate in national elections. The participation of regional movements and local political organizations is restricted to elections at departmental and municipal level, respectively.

In order to register, a political party needs to submit several documents, such as its statutes and its founding charter. It must also designate legal representatives. The most demanding requirement, however, is the collection of a number of signatures equal to at least 3% of the voters at the last national elections, i.e. around 450,000 signatures for the 2016 elections. Parties are also required to establish party committees in at least one third of the districts in two thirds of the departments. It is commonly estimated that the process to register a party takes at least two years. These requirements make the registration of new parties difficult while allowing the maintenance of party structures that are no longer active. Once registered, political parties and alliances must elect their candidates through one of the following three mechanisms: internal elections among their affiliates, internal elections open to all citizens, or direct designation by a party's committee. Only two parties celebrated primaries for the 2016 general elections, namely Acción Popular, which restricted them to its affiliates, and Frente Amplio, which opened them to all citizens. Nevertheless, the law allows for a party's management committee to designate one fifth of the party's candidates directly, as established in the parties' statutes. However, as party committees are allowed to directly designate candidates, this requirement can be easily bypassed.

The failure to meet rules regulating the internal workings of parties -often referred to as internal democracy- was the reason for excluding the candidatures of the *Todos por el Perú* party, which fielded Julio Guzmán as presidential candidate, from the general elections (See Chapter 5). The EU EOM considers that there was a clash between the candidate's right to participate and internal democracy rules, and that the candidate's rights should have prevailed as fundamental rights enshrined in the country's international obligations.

### **8.2 Recent amendments**

Among the amendments to the Political Parties' Law passed in January 2016, there were provisions affecting the number of candidates who can be directly chosen by a party's governing body, which was increased from one fifth to one fourth of the total number of candidates, and the requirements to maintain a party's registration. Based on these amendments, a party coalition needs to obtain an additional 1% on top of the minimum 5% of the valid votes at the national level for each additional member of the coalition. Thus, a

coalition of three parties would need to obtain six members of Congress or 7% of the valid votes at the national level.

As these amendments were passed after the elections had already been called for, doubts were raised about whether the amendments should enter into force for the 2016 elections or only for upcoming elections. Having not obtained any clarification from Congress, the JNE decided that none of them would be applicable for the 2016 process as affecting stages of the process that had begun before the Law was passed (see also paragraph 3.3). However, the type of national election in which a party is required to attain at least six members of the Congress or 5% of the valid vote in order to maintain its registration was not explicitly detailed. The JNE ruled that *Democracia Directa* (DD) was entitled to keep its registration, having obtained 5.02% of the valid votes in the Andean Parliament elections, although it obtained only 4% of the vote in the presidential elections and 4.3% in the Congress elections. DD's candidates argued that having reached the 5% threshold, the party was entitled to four seats in the department of Cajamarca, where it obtained 40% of the valid votes, and one seat in the department of Puno. The JNE however subsequently ruled that in order to receive seats in Congress the party should have obtained more than 5% of the valid votes in the Congress elections, and not in any other election at the national level, a decision that should have been known before elections.

The EU EOM considers that the establishment of two different thresholds, one for the maintenance of registration and another one for the assignment of seats in Congress is confusing. Moreover, the implementation of the 5% threshold at the national level might be excessive for parties whose vote is concentrated in a few departments. The EU EOM recommends it would be advisable to establish two different thresholds explicitly, one to maintain a party's registration and another one to participate in the distribution of Congress seats. Alternatively, there could be a single threshold explicitly mentioned as serving both purposes. As for the distribution of seats, the EU EOM recommends a lowering of the national threshold or the creation of an alternative regional threshold in order to adequately reflect the will of the voters in the adopted proportional system of representation. This would avoid that a party winning the election at the departmental level is not assigned any seats in the Congress.

### **8.3 Withdrawals**

By the end of the deadline to register candidates' lists, on 10 February 2016, there were 19 lists for Congress and 20 for the presidency. As of 1 April - the legal deadline to withdraw candidatures- only 10 candidates were still running for the presidency. These withdrawals were motivated by the risk of losing their parties' registration altogether. According to article 13 of the Political Parties' Law, parties obtaining less than 5% of the vote at the national level or less than 6 representatives in Congress in more than one electoral district are required to re-register to participate in future elections. This would be a lengthy and expensive process, which many might not be able to accomplish in time for the 2018 regional and local elections. However, the parties and candidates that withdrew, among them the ruling *Partido*

*Nacionalista Peruano*, *Perú Patria Segura*, and *Perú Libertario* alleged partiality of the electoral authorities to motivate their withdrawal and challenged the legitimacy of the process. Some commentators criticized the withdrawals arguing that initial registration to run amounts to participation, and thus parties withdrawing from the election should lose their registration.

## **9. Civil Society**

### **9.1 Civil Society**

The mission maintained continued contacts with *Asociación Civil Transparencia*, the most relevant national civil society voice on electoral matters. *Transparencia* participated on both Election-Days with around 2,000 accredited observers nationwide, and concentrated on the overall electoral environment, not focusing specifically on the classic electoral day observation stages. Ten days before the first round of elections, *Transparencia* made a public call for all stakeholders, from the electoral authorities to the government and political parties to contribute to a peaceful and open electoral process. This was an appeal to put aside prevailing concerns about the application of recent imperfect modifications to the law, and rather concentrate on promoting eventual electoral reforms after the 2016 general elections. Towards the second round, *Transparencia* continued to focus on the importance of a thorough political reform, and called on representatives of the newly elected Congress to work on multi-partisan fashion towards this goal.

The civil association *No Tengo Miedo* participated in the observation effort, focusing on giving visibility to LGBTIQ issues. For the first round, their observers were present during polling hours but did not observe the crucial stages of counting and tabulation of results. For the second round of elections, *No Tengo Miedo* did not observe polling but monitored social media and created a platform to receive complaints and concerns from LGBTIQ voters.

The civil association *Proetica* engaged mostly in monitoring political parties and candidates behavior throughout the campaign and collected important information on the way parties financial reports are collected.

### **9.2 International Organizations that observed elections**

According to the JNE, around 350 international observers were accredited to observe both electoral rounds. The EU EOM coordinated activities with the Organisation of American States and held exchange meetings with the Confederation of Canadian Parliamentarians, Carter Centre, UNASUR, UNIORE, US Embassy and Japanese Embassy accredited observers.

International IDEA continued to support the electoral process by providing a range of tailored technical assistance services to the JNE and other key stakeholders, including political parties, Congresspersons, media, observation missions and gender groups and remained engaged in offering a neutral political space for reform dialogue.

### **9.3 The role of Churches in elections**

The current Constitution guarantees freedom of religion, while acknowledging the role of the Catholic Church as an “important element in the historical, cultural and moral development

of the nation”. This implies that the Catholic Church enjoys a special treatment by the State<sup>17</sup>. Priests receive a salary from the State and do not pay taxes. Catholic congregations and companies owned by the Catholic Church do not pay taxes either. Successive attempts to extend these privileges to the Evangelical church have failed. None of the officially recognized churches played a major role during the 2016 Peru general elections. Article 347 of the Election Law prohibits clergy members from campaigning in favour or against any party or candidate. However, churches usually lobby Peruvian parties to prevent advances in gay rights or the legalization of abortion, effectively preventing these issues from becoming campaign topics. The explicit support to Keiko Fujimori’s presidential candidature by some evangelical groups, some of whose members publicly made homophobic remarks, as well as the statements implicitly favourable to Keiko Fujimori made by Catholic Church cardinal Juan Luis Cipriani on the eve of the second round of the presidential election were interpreted by some groups as undue interferences in state matters.

Leaders of different evangelical denominations traditionally run for Congress seats. At least five parties included seven of them in their lists in 2016, two of which were elected, one for *Fuerza Popular* and another for *Alianza por el Progreso de Perú*, both in Lima.

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<sup>17</sup> According to a 2015 poll, 94% of the Peruvians are Christians, whereas the remaining 6% practice other religions or are atheists. Among Christians, 78% are Catholics, 20% are Evangelical Christians, and the remaining 2% do not belong to any recognized Catholic or Evangelical Christian denomination

## 10. Gender Issues, Participation of Women and Indigenous Groups

### 10.1 Women Participation

The right to vote for women in Peru was introduced 60 years ago. Nevertheless, the political will to introduce effective mechanisms to achieve full equality in political representation remains low. Women constitute a little over 50% of the voter register, but are underrepresented in public and political life despite the constitutional recognition of equality, the prohibition of gender based discrimination and the adoption of international (CEDAW) and regional commitments to enhance women's participation. The Ombudsperson pointed out that women still encounter several obstacles in their access to political life. According to the Ombudsperson Office, women candidates received little support from their political parties, were generally less prepared academically and had less financial resources when compared to men. In addition political party structures do not adopt voluntary gender parity in their internal organization and statutes and do not place women in decision-making positions within party structures. According to RENAMA, the Network of Women Elected to Local Government Positions, elected women in local governments also face political harassment. According to their recent 2014 survey, more than one third (39%) of 187 women who occupied elected offices at the regional, provincial or district level reported having been harassed and more than one third of them (39%) said to be harassed during the period ranging from January 2011 to January 2014. In most cases (71%), the harasser was the mayor. Verbal harassment was reported as even more extended, affecting half of the elected officials. A law against politically motivated harassment is currently under preparation.

As for the right to stand as candidates, a 30% quota for women is mandatory for the registration of party lists for Congress. The law does not oblige parties to place women in high ranking positions on the lists: nevertheless, the preferential vote offers the voter the possibility to select women regardless of their ranking order. While the preferential vote originates competition among candidates within the same party, women candidates interviewed evaluate the preferential vote as positive, however qualifying that only financially well off women candidates could afford to fund a campaign and thus get elected through this system.

Civil society organisations publicly raised the debate for the need to introduce alternate gender representation in the list to guarantee at least the fulfillment of the 30% elected women to Congress. *Transparencia* reported that only 24.6% of women were positioned in the first tier of party lists. The ONPE issued a statement following the elections urging the approval by Congress of alternate positioning of female candidates on party lists while recognizing the current system as falling short of adequate representation. The minimum quota of 30% in lists seems to be currently regarded by political parties as a mere mandatory pre-requisite for the inscription of candidates as its violation results in the exclusion of the party list. The electoral laws do not regulate consistently the respect of the 30% quota requirement in cases where women candidates are excluded from the lists, as it happens for the exclusion for omission of false information on candidate's CV) or any other challenge

(*tachas*) regarding their inscription. In such cases the electoral law does not require the replacement by another female candidate.

According to the JNE’s statistics, 39.61% of registered candidates for Congress were women (2,241 candidates in total, 888 of them women, an increase of barely 1% since the 2011 elections). The presidential race saw two women candidates standing in the first round – Keiko Fujimori and Verónica Mendoza - and 10 women run as vice-presidential candidates (two as first vice-president and eight as second vice-president). There is no gender quota for the presidential ticket.

In the new Congress, only 35 of the 130 elected members will be women (27%). This represents an increase of 5 percentage points since 2011, when 22% of the elected Congress members were women. Only the district of Ancash will have more Congresswomen than Congressmen, and there will be parity in Amazonas, Callao, Lima-Provinces and Loreto. Ten of the 26 electoral districts, i.e. more than one in three of them, will not have any Congresswomen. Despite this seemingly positive development, women’s representation in Congress remains low and under the 30% quota foreseen for party lists. The parties with most elected women candidates are FP with 24, FA with five and PPK with three. Out of the ten most voted candidates, five are women (three for FP; FA and PPK with one each). Only the district of Ancash will have more Congresswomen than Congressmen, and there will be parity in Amazonas, Callao, Lima-Provinces and Loreto. Nevertheless, in 10 (among those Cajamarca, Puno and Uyacali) of the 26 electoral districts no women were elected to Congress, exposing deeply unequal conditions in over one third of the electoral districts.

#### *Women’s Representation in Congress*

Year	Congress women	Percentage
1995	13	10,8%
2001	22	18,3%
2006	35	29,1%
2011	28	21,5%
2016	36	27,8%

Source: ONPE

The long-term observation showed that actions to promote gender equality in political participation, received little attention from political parties and candidates in the regions visited. Parties rarely mentioned the empowerment of women in their political platforms. The FP’s platform did not offer specific measures to establish equal participation of women in political and public life but instead offered proposals to combat domestic and gender violence (*feminicidio*) and included a gender perspective for several policies and advocated for equal pay. FA’s presidential candidate represented a generation of women seemingly aiming at breaking traditional gender roles. FA’s platform proposed parity in all governmental posts and across the legislative, judicial, executive and electoral powers, including the Constitutional Court. Other issues like abortion, same sex marriage and free public health and

emergency centres services for women provided in local indigenous languages were part of FA's platform.

Indigenous women elected at local level faced double discrimination and many difficulties to participate in the definition and implementation of policies for their communities. Some incumbent local officials (*regidoras*) reported they were invited by parties to fulfill the gender and indigenous quota only. In some regions, like in Madre de Dios, indigenous female politicians underlined the lack of coordination and institutional organisation of indigenous communities that impacted negatively in their political participation and in the visibility of gender related issues. According to the JNE's Political Organisations Register, 28.4% of the authorities within the 25 parties currently existing in Peru are women, but no Peruvian party has active, explicit policies to promote women for these positions. According to EU EOM observations from the regions, women candidates are generally found to focus more than men on issues such as family, the eradication of domestic violence or equal working conditions. In general, it is reported that "traditional society" makes it difficult for women to get involved in politics. The EOM observed that the average proportion of women's attendance at political rallies was around 40%.<sup>18</sup>

According to reports from the field, women are well represented within the JEEs, ODPEs and as polling station members (where there is no quota as members are selected by lottery). At the higher level of the electoral judicial institutions, a more equalitarian gender representation would positively impact the public perception of inclusion and equal representation. Women candidates generally focus more than men on issues such as family, the eradication of domestic violence or equal working conditions for men and women. Traditional roles in Peruvian society make it difficult for women to become involved in politics and there are few noticeable efforts to reverse this situation, beyond the work of NGOs working for women's rights.

During the electoral campaign that preceded the 10 April elections, several civil society and human rights groups raised the issue of the violation of reproductive and human rights through forced sterilisation of indigenous women, which occurred during Alberto Fujimori's government. In 2015 the Ministry of Justice recognized as national interest and as a priority the attention to be given to victims of forced sterilisations, established a national registry of sterilized women and recommended the creation of a legal framework for the implementation of legal assistance and medical treatment.<sup>19</sup>

## **10.2 Political participation of people with disabilities**

According to official estimates, around 1.5 million of Peruvians, approximately 5% of the population, have a disability. Despite the ratification by Peru of the Convention on the Rights of Persons with Disabilities in 2008 and the approval of the 2012 People with Disabilities'

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<sup>18</sup> A 2002 report by the Ombudsperson indicates that some 300,000 women were affected while the Final Report of the Commission on Truth and Reconciliation estimates over 200,000 fell victim of unwanted medical interventions in the late 1990's

<sup>19</sup>Ministry of Justice Supreme Decree 006-2015.

General Law, the lack of political will has hindered a meaningful improvement in the living conditions of Peruvians with disabilities, according to sectorial organizations.

Fourteen of the nineteen parties running in the 2016 general elections proposed policies in favour of people with disabilities. Nonetheless, only five parties, including three that have held government responsibilities (*AP* and *PNP*), lacked proposals in this regard. Proposals for improving the living conditions of people with disabilities mostly referred to employment, education and health issues, but generally lacked an exhaustive analysis or were excessively abstract, according to the assessment by CONADIS (National Council for the Integration of People with Special Needs), the public agency dealing with disabilities in Peru. There are no official statistics about candidates with disabilities. Three candidates with disabilities received media coverage which made them noticeable. All of them ran for Congress in the Lima district: Jane Margarita Cosar Camacho (*AP*), Bárbara Alessandra Ventura Castillo (*APP*) and Luis Galarreta (*FP*). Only the latter, who had already been elected to Congress in 2001 and 2006 was elected. Parties do not issue campaign materials tailored to voters with disabilities.

### **10.3 Political participation of Indigenous People**

Peru's multicultural heritage and its different ethnic groups are protected by the Constitution, nevertheless the level of discrimination against these groups remains high as reported by human rights organisations, civil society groups and as observed by the EU EOM. Significant poverty ratings in several regions of the country affect many indigenous communities and other vulnerable groups. Several unresolved social conflicts resulting from local communities' protests linked to state or private mining contracts (or illegal logging, water and road projects) involve indigenous communities. Social conflicts are traditionally associated with violence and the abuse of police forces, resulting at times, in civilian injuries and deaths. The National Coordination of Human Rights (CNDDHH) supervises and keeps a record of conflictive areas and related complaints. According to their files, social protests are criminalised leading to violations of human rights, especially the right to expression, and are sanctioned with disproportionate penalties. A roadblock by two or more persons can be legally qualified as aggravated extortion and sanctioned with imprisonment of up to 20 years (Penal Code, article 200). The CNDDHH accounted for approximately 50 people who were killed in the past five years in clashes with police. No one has been charged or prosecuted in relation to these killings.

Political parties paid little attention to indigenous communities during their 2016 campaign. CNDDHH issued an open letter calling for both presidential candidates in the second round to include indigenous policies in their political agendas with special focus on issues such as the previous consultation mechanism, territory, illegal mining and the protection of the environment. The UN Special Rapporteur for the Rights of Indigenous People and the Inter-American Commission for Human Rights highlighted in April 2016 the need to enhance the protection of collective rights of indigenous people as commercial international treaties for

the extraction of natural resources might affect their territory and their way of life. Local communities are not consulted nor involved in the negotiations.

The law enhances the participation of traditionally vulnerable groups with affirmative actions, namely through quotas. Party lists include a youth quota of a minimum of 20% for candidates under 29 years of age and a quota of 15% for indigenous communities and peasant farmers in party lists. These quota requirements apply for local elections only. As for the native quota, the JNE must determine the areas in which the quota applies ahead of each local election. For the 2014 election the JNE defined the areas selected for native election quota based on information provided by the Ministry of Culture: 18 departments and approximately 90 provinces were qualified for the implementation of native quotas.

Regarding national representation, there are no youth and native quotas in party lists for Congress or the Andean Parliament. According to indigenous CSOs and candidates interviewed by the EOM, political parties tend to place young and indigenous candidates together with women candidates at the end of lists reducing their chances of being elected. With the view to enhance political participation and equal representation, the EU EOM recommends the development of the criteria to allow for the inclusion of additional indigenous communities, such as a quota for the higher half of the candidates lists, the adoption of mechanisms for the representation of these groups also at national level and the revision of the law in order to assure the effective implementation of the different quotas.

EU observers reported that many of the 55 existing indigenous communities are bilingual and understand Spanish. According to official data, some 70% of these communities live in mountainous areas (sierra); 25% live on the coast while only 4% in the Amazon region. Only one out of the 19 initial presidential candidates is of indigenous origin – Miguel Hilario (*Progresando Perú*) of the Shipibo ethnic group. The Afro-Peruvian community, representing some 3% of the population and mainly living in the coastal areas, organized working sessions with a few candidates from Lima in order to raise awareness of their cultural identity and challenges. ONPE's voter education office produced micro-radio programs in four local languages (Aymara, Aguaruna, Ashaninka, and Shipibo) and four Quechua dialects and training of polling staff was done in Spanish with the help of local interpreters. It is not clear if radio programs were broadcast to all indigenous communities. At some polling station in the Amazon region personnel speaking local languages were present to facilitate the vote of indigenous people.

## 11. Media

### 11.1 Media Landscape

Peru has a pulsating media scene with almost 100 daily newspapers, as well as more than 1300 TV and almost 4000 radio stations throughout the country. This diverse market is, however, also characterized by a strong concentration of property, and by a visible difference in the level of the professional ethics of the Lima-based media and many of the media in the interior. *El Comercio* group, the RPP conglomerate controls most of the country's press market, with a strong presence in the radio market. The TV market share is divided between a few major players. Radio remains the most influential type of media in terms of both accessibility and credibility. Quality newspapers sell mostly in Lima and other big cities. The two most influential newspapers, *El Comercio* and *La República*, seem to reflect the views of the liberal centre-right and centre-left segment of the political scene respectively. The vast majority of the TV and radio stations are privately owned, advertising being the main source of their revenue. The influence of the state media (*TV Perú*, *Radio Nacional* and *El Peruano* daily) in the election campaign has been very limited in terms of viewers and readership. All Lima-based national media report almost exclusively in Spanish.

The cable TV and Internet penetration rates are relatively limited and reach, according to various sources, around half of the population. Even though all electoral stakeholders used Facebook and Twitter, their use seems to be concentrated in Lima and big cities. With the exception of some isolated cases, most popular news websites belong to traditional media.

### 11.2 Legal Framework for Media

The 1993 Constitution guarantees the right to freedom of information and bans censorship. The specific Law no. 27806 also provides for access to public information, although some journalist interlocutors have pointed to various difficulties with its application, especially long delays. The penal code provides for prison sentences for 'crimes against honor', such as libel, slander, and defamation.

The Law on Radio and Television requires that the state-owned media maintain political impartiality while it leaves complete liberty of editorial choices to the private media outlets. The only limitation refers to paid advertising, which should be applied evenly to all political actors, and which should not exceed five minutes a day per political party. Some selected national media were also obliged to broadcast between 10 and 30 minutes of unpaid political spots, the so-called *franja electoral*, during the last 30 days of the campaign in the first round and offer one minute of unpaid spots to each candidate during the last 10 days in the second round. The selection had been conducted by the ONPE and the criteria used (status of the media, its viewership/listenership) seemed to be objective. Although the *franja electoral* did not seem to play a major role in the election campaign, it played an overall positive role and guaranteed a minimum access to the media to all contenders.

Peru does not have a media regulatory body, the Peruvian Press Council (CPP) being a voluntary media organization, and the Consultative Radio and Television Council

(CONCORTV) – an advisory self-regulator, whose major tasks include observing the process of granting licenses and conducting research in journalism.

### **11.3 Respect of the freedom of the press**

During both rounds freedom of the press was largely respected and all media interlocutors reported to the EU EOM they feel free and safe to cover the campaign. The state did not place restrictions on the use of the Internet. On March 30, the representatives of seven out of ten presidential candidates (including all major ones) for their part, signed the Lima Principles, a document created in 2000, in which they committed periodically to respect freedom of press in case of election.

However, the sentencing of two journalists, Rafael León and Fernando Valencia, accused of slander in cases not directly related to the electoral process may have contributed to a climate of self-censorship. The EU EOM noted that in both cases the rulings were issued on expressed opinions or interpretations and not for presenting false information. The EU EOM believes that General Comment No. 34 of the UN Human Rights Committee that penal defamation laws ‘should not be applied with regard to those forms of expression that are not, of their nature, subject to verification’ is applicable in Peru.

In February, three private TV stations and the influential newspapers *El Comercio* and *La República* signed an agreement to respect the basic rules of coverage of the election campaign prepared by the local IPYS institute and International IDEA with the endorsement of the EU Delegation. They pledged, among other things, to make a clear distinction between information and commentary and to put an emphasis on informing voters about the parties’ and candidates’ programs so as to help them make an informed choice. The role of this document was highly valued by some interlocutors.

## **SECTION V - The First Round of Presidential Elections, Legislative Elections, Andean Parliament Elections**

### **12. The Pre-Election Phase**

#### **12.1 Election environment and campaign**

The campaign for the first round of the general elections was generally peaceful. Only isolated cases of violence were reported, which did not interfere with political parties' and candidates' rights to freedom of assembly, expression and movement. The most serious incident involved the murder of 10 persons transporting electoral materials in the province of Huancayo, in the department of Junín, on 9 April, the day before the elections. The EU EOM condemned this attack.

The campaign featured few public events, as noted by EU observers, given the weakness of political parties and the need for candidates to obtain funds for their campaigns. The lack of funds also affects the activities of parties beyond electoral periods. This situation could be due to the restrictions to the delivery of goods passed by Congress in January 2016, which resulted in the exclusion of several parties and candidates. Excessive media focus on the issue of exclusions may also explain the lack of debate about key topics, some of which involve fundamental rights, such as the forced sterilization of women during the 1990s.

#### **12.2 Media Monitoring Results**

The EU EOM monitored a total of five television channels and three radio stations (all of which in prime time) as well as six newspapers during the last four weeks of the campaign in the first round and during the five weeks of the second one (available electronically in Annex II). The TV channels were observed on a daily basis in their prime time (1800 hrs to 2400 hrs) and the radio stations between 600 hrs and 1000 hrs. The whole content of the newspapers was taken into account.

The analysis shows that the candidates enjoyed broad access to national media, which reflected a plurality of views in their editorial lines. With very few exceptions, campaign coverage was balanced, informative and plural. The majority of monitored broadcast media offered the candidates the same conditions regarding interviews and they all broadcast the debates live.

The monitored State-owned media largely respected their obligation of neutrality. During the first round, *TV Perú* and *Radio Nacional* broadcast interviews with all competing political parties. The only State-owned newspaper, *El Peruano*, limited its coverage of political information and avoided political commentary. Quantitative analysis of the content of the three State-run media has not shown any visible bias in the coverage of the main political forces. Also before the second round the three observed State media treated the two candidates in a similar way and offered them the possibility to spread their messages. The

majority of the privately owned broadcast media made efforts to offer relatively balanced information. During the parliamentary elections and the first round of the presidential one between 21% and 26% of the coverage on television channels *Latina – Canal 2*, *América TV – Canal 4* and *Panamericana Televisión – Canal 5*, together with that on radio stations *RPP* and *Exitosa*, was allocated to FP and its presidential candidate Keiko Fujimori; whereas an average of 15% was allotted to PPK, 14% to FA (Verónica Mendoza), and 11% to AP. Beyond the coverage provided to the four front-runners, the coverage dedicated to AP (14-22%) is noteworthy and explainable with his higher level of political meetings.

Although the Lima-based national media mostly demonstrated professional coverage of the election campaign, various reports from the interior present a different picture regarding local radios and TV stations. A dozen LTO teams have alleged or in some cases documented various infringements of good journalist practice, including paid interviews and coverage, offering PR services to political parties, as well as applying different prices for political advertising, a practice explicitly banned by the Law on Radio and Television, or breaking the article 40 of the Law on Political Parties which limits the maximum time of advertising bought by the same party to 5 minutes a day.

Many EU EOM interlocutors confirm these practices, and attribute them to the general lack of professionalism as well as, what they call, an unclear system of granting licenses, a lack of sustainable financing, and interdependence between local politicians, business and some media. This phenomenon, combined with a general absence of coverage of the regional candidates by the national media, may have left many voters in some districts without sufficient information. EU EOM findings reveal that almost 90% of the coverage in seven observed radio and TV channels has been dedicated to the candidates from Lima.

### **12.3 Administrative and Logistical Preparations**

ONPE respected the established electoral calendar and was prepared to receive the almost 23 million registered voters at the polls on 10 April. ONPE produced high quality electoral materials that were produced in country and deployed in time for the polls. In line with Electoral Law requirements, ONPE had to produce posters containing the pictures and ranking order of the presidential tickets and the lists of congressional and Andean Parliament candidates for display in public places from 27 March. The same posters hung inside voting booths. 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. ONPE ensured that adequate arrangements were taken at polling stations for voters with differentiated needs; however the EU EOM observed some complaints about whether the obligation to vote was equally applicable to them. The EU EOM further noted that no logistical preparations are normally taken to facilitate the vote for electors in hospitals or preventive detention.

### **13. Election Day, 10 April 2016**

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 a total of 436 quantitative reports to the EU EOM database, including 80 tabulation reports on the operations taking place at the Decentralised Offices of Electoral Processes (more details are available electronically in Annex IV).

#### **13.1 Opening and Polling**

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; ONPE later revealed that by 11:00am, three hours after the scheduled opening of polling stations, only 74% of polling stations were open. ONPE official data reported that all polling stations in the national territory opened and that 74,001 (99.7%) of the 74,224 polling stations opened before midday. A total of 26 of the 3,083 polling stations for out-of-country voting did not open, effectively disenfranchising a small number of voters. Almost 27% 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 (198 PEN), which are in addition to the fine for not voting (79, 40 or 20 PEN depending on poverty level of the elector's district of residence). In 6,060 cases, as in past elections, ONPE had to substitute appointed staff with untrained voters from the queue. The noticeable absence of polling staff stood in strong contrast to ONPE's otherwise good state of readiness to implement polling. The EU EOM did not observe any lack of essential election materials.

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. Some 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 polling procedures were applied and respected, with only minor exceptions. The overall turnout announced by ONPE was around 82%

#### **13.2 Closing and Counting**

EU EOM observers assessed the counting process as "very good" or "good" in 75% of the observed polling stations. This assessment was largely due to the work of contracted ONPE coordinators who provided on-going 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 and resulted in the subsequent withholding by ONPE of many results protocols for mistakes due to human error.

### 13.3 Results Aggregation

EU EOM members observed the reception and digitalisation of result 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 observed the process until the official proclamation of presidential results on 9 May and congressional results on 30 May, including the review process for protocols with errors or irregularities that were classified as “on hold” (*actas observadas*) as well as other electoral challenges.

For these general elections, ONPE also extended its Automated Count System (*Sistema de Escrutinio Automatizado*, SEA in Spanish) to reduce errors in results protocols. Traditionally, over 80% of mistakes on protocols are in relation to manual miscalculations. Digitalising results at the polling station level and printing results protocols reduces human error and introduces more accurate and timely reception of results at the national level. At the same time, it was noted that polling station staff lacked adequate technical training and in many rural locations communications deficiencies thwarted its full implementation.

On Election night, ONPE held a press conference at 21,00 hours to announce the first wave of preliminary results with 20% of protocols processed. The electoral authority gave regular updates over the following days, keeping stakeholders well informed. Polling station results, including scanned original results protocols were made available on the official ONPE website. ONPE first processed results for the presidential elections, and secondly for the congressional and Andean Parliament elections. By the morning after Election Day, ONPE had processed the majority of results. A small number of polling stations for out-of-country voting were unable to open and voters could not vote on Election Day due mainly to the absence of designated polling staff and the inability to find voluntary replacements.

Results protocols arrived quickly from polling stations to ODPE Aggregation Centres, except for a small number from remote areas and for out-of-country voting which were not included until one week after Election Day. The transmission of polling station results to the ODPE Aggregation Centres was orderly, secure, and free from intimidations or incidents. Procedures were adhered to and ONPE coordinators were observed to have a decisive role in directing polling staff; EU observers noted few formal complaints lodged in the 60 ODPEs. Overall, the EU EOM assessed the aggregation process as well organised and as either ‘very good’ or ‘good’ in 100% of observed ODPEs. Overall, ONPE reported that 20,500 results protocols were sent to the corresponding JEEs for adjudication. Out of these, only 1,032 concerned the presidential elections. Some JEEs took weeks to complete this process for which there is no legal deadline, with the only requirement for appeals to be adjudicated within within three days from the first instance rulings. Overall, both aggregation at ONPE and adjudication at the JEEs and JNE were very transparent, with results protocols being made available on the ONPE website for comparison and public scrutiny always permitted. Nevertheless, the extreme slowness of the process was not justified by any real challenge and the vast majority of the legal issues to be resolved were due to technical mistakes of a simple nature.

While the EU EOM noted that JEEs changed polling station decisions in many cases with respect to decisions on the validity of challenged ballots, the number of affected ballots was almost inconsequential. On the other hand, the EOM observed that many results protocols were invalidated by JEEs if they contained calculation errors, as was the case when the number of votes exceeded the number of electors. This resulted in a number of valid votes being annulled.

ODPEs and JEEs remained active during the eight weeks between the first and second round of elections, with the major aim to analyse the problems of Election Day and data processing and aggregation of results with a view to introduce improvements before the second round, including practical measures to expedite the transmission of observed and challenged results protocols between ODPEs and JEEs.

#### **13.4 Role of party agents and observers**

The presence of political party agents contributed to the transparency of the process, although the EU EOM noted they were not always present in the observed polling stations. Moreover, party agents were hardly visible at any of the ODPEs during tabulation, or at JEEs during verification of observed and challenged protocols. Political parties seemingly had little interest in following this essential part of the process, which might be indicative of their confidence in the integrity of the electoral authorities but also underscore lack of organisational capacity. At ODPEs party agents and EU observers had access to contested results data where original scanned protocols could be compared with their own copies. At JEEs only protocols with challenged votes were publicly revised.

## **SECTION VI - The 2nd round of Presidential Elections**

### **14. The Pre-Election Phase**

#### **14.1 Election environment and campaign**

Peruvian electoral laws do not provide for a break in the electoral campaign between the first and the second round, leading to an excessively long and costly campaign. As for the first round, the campaign for the second round was largely peaceful. Both candidates were able to exercise their freedoms of assembly, expression and movement. The JNE organized three debates, two for the presidential candidates and one for their teams, totalling the highest number of debates ever organized for presidential elections in Peru. Two of these debates were held outside Lima for the first time in the country's history.

Crossed accusations and an aggressive tone ultimately prevailed over the discussion of political programmes. Peaceful citizen protest against Keiko Fujimori's presidential candidacy towards the end of the campaign contributed to a more strained electoral environment. On the other hand, the timely statements by the Ad Hoc Tribunal of Honour played a stabilising and moderating role in the campaign.

A few weeks before election day, the candidates and the media raised questions on the sources of campaign finance and implicated several serving politicians. The accusations against Joaquín Ramírez, FP's Secretary General and outgoing Congress member were particularly serious, forcing his resignations from his leadership position. Some elected members of the Congress of the Republic of Peru were also reported as being investigated for possible links to unlawful activities and money laundering.

#### **14.2 Media Monitoring Results**

The EU EOM monitored five television channels, three radio stations (all of which in prime time) and six newspapers during the last five weeks of the electoral campaign (available digitally Annex III). The analysis shows that both candidates enjoyed broad access to national media, which reflected a plurality of views in their editorial lines. With very few exceptions, campaign coverage was balanced, informative and plural. The majority of monitored broadcast media offered the same conditions to both candidates regarding interviews and they all broadcast the three debates live. Local media coverage, in the interior of the country, was more limited compared to the first round.

During the second round Keiko Fujimori enjoyed greater coverage in most media outlets, with an average of 58% of total coverage in broadcast media and 60% in the written press. This type of coverage can be explained by the greater number of campaign activities carried out by Ms Fujimori, as well as the different allegations involving her close aides. These accusations also increased the level of negative tone coverage regarding her campaign in most observed media in the last weeks. Radio station *RPP Noticias* was an exception to this

trend, wherein Pedro Pablo Kuczynski accumulated the majority of negative coverage in the observed time slots. During the first round the critical tone was distributed among various candidates, mostly Fujimori and Verónica Mendoza, while during the second one it was mostly related to reporting about accusations against Fujimori.

While TV stations mostly concentrated on reporting in neutral tone, the editorial lines were much more visible in the written press. While the daily *la República* openly campaigned against Keiko Fujimori, *Correo* was, during the first round, particularly critical towards Verónica Mendoza and her FA coalition. Another influential newspaper *El Comercio* provided the readers with generally balanced coverage of the campaign during the first round and took an openly *antifujimorista* position in its op-eds during the last weeks of the campaign.

*Panamericana Televisión*'s broadcast of a tampered audio recording in the “*Las cosas como son*” programme to discredit a witness related to an investigation involving the secretary general of *Fuerza Popular* was a serious violation of its own ethical code. The EU EOM acknowledges that the channel suspended its contract with this programme, whose space had been rented by another entity, and that journalists from *Panamericana Televisión* condemned this violation. This incident highlights how the renting or awarding of broadcast space, a relatively common practice in many media outlets in Peru, particularly in the provinces, opens the door to the dissemination of false information and can therefore be detrimental to the right to exercise an informed vote.

### **14.3 Administrative and Logistical preparations**

The JNE fulfilled its supervisory role in a transparent and effective manner, both nationally and regionally, while the ONPE carried out the necessary preparations adequately. EU EOM observers assessed that ODPEs administered the elections effectively throughout the country, despite protests from temporary staff whose contracts were unexpectedly reduced following budgetary cuts. Late hiring of staff resulted in less time available for capacity building and raising awareness. These constraints were not observed to affect negatively on the electoral process. ODPE staff demonstrated commitment and transparency as well as a good understanding of electoral procedures. Nonetheless, there were concerns in some instances regarding the perceived lack of neutrality of local coordinators.

More than 100,000 members of the armed forces and the police ensured the security of electoral materials and that of polling and aggregation centres during both the first and second rounds. While police and armed forces personnel have the right to vote, they are given dispensation from the JNE for the applicable sanction associated with not voting. To better ensure the integrity and security of electoral staff, voters and electoral material, the ONPE relocated some polling centres within the Valley of the Apurimac, Ene and Mantaro Rivers (known as VRAEM), a measure which affected around 52,000 registered voters. This resulted in complaints from voters who were unable to travel the large distances to polling

stations and therefore did not vote. At the time of writing, the JNE discussed dispensation for an unknown number of voters in this category.

Women were adequately represented within the electoral administration, in both the first and second round of the elections. Women represented nearly half of all polling station staff and political party representatives, particularly in urban areas.

#### **14.4 Voter Education and Staff Training**

The electoral authorities offered limited opportunities for civic and voter education for the second round, with the exception of the official website and social media. In collaboration with telephone operators, the ONPE ensured that text messages were sent providing information on polling station locations and polling station staff nominations, to all mobile phones registered in the country. The ONPE organised another national training campaign for all 463,842 electoral staff. The EU EOM assessed the quality of training positively, however participation rates were exceptionally low across the country, with less than five per cent of selected staff participating. The training campaign together with all electoral materials was prepared exclusively in Spanish. The ONPE also developed a wide array of IT applications for training and voter education, which despite their high quality were only used by a small number of voters.

## **15. Election Day, 5 June 2016**

The EU EOM's 87 observers visited 304 polling stations throughout the day in the country's 25 departments; opening was observed in 35 of these polling stations. Observers transmitted 28 tabulation reports on the activities taking place at the ODPE aggregation centres. The EU EOM consolidated information from 332 observation reports (More details are available electronically in Annex V).

### **15.1 Opening**

According to the ONPE, polling stations were set up faster than for the first round; all 74,244 polling stations around the country were open before midday. Polling stations opened with a slight delay in 91% of the cases observed by the EU EOM because of missing polling station staff that were subsequently replaced either by substitutes or by voters queuing to vote. These delays were shorter compared to those in the first round. The EU EOM observed very few cases of missing of electoral materials in polling stations and noted that voters found their corresponding polling stations with relative ease as compared to the first round.

### **15.2 Polling**

Election day was peaceful and orderly with again a turnout of over 80%. EU EOM observers assessed the overall conduct of polling as "very good" or "good" in 98% of observed polling stations. The EU EOM observed that procedures were applied and respected, with few exceptions. The Mission noted a significant participation of women as polling station chairpersons (45%) and as polling centre coordinators. Representatives from both political parties were not always present during polling operations, but were present in all of the polling stations where counting was observed. Five official complaints were recorded among the 238 polling stations where polling was observed. The ONPE recruited youth volunteers, such as those from the Peruvian Scouts Association, to help to guide voters within polling centres. Access for persons with disabilities was ensured in 74% of observed polling centres, an improvement as compared to the first round. The political party *Fuerza Popular*, the days following the elections raised two concerns related to polling day: the first was about the alleged impediment to voting posed by an alert of Ministry of the Interior and the National Police, and the second about the unusual relocation of a significant number of polling stations in VRAEM. On the first case, the type of alert issued for the presidential run-off was of the same nature of those issued by Ministry of the Interior and the National Police on 10 April and for previous elections. It authorized urgent relocation of personnel, when needed, to support the normal conduct of electoral activities and it covers only half day, allowing time for polling duties<sup>20</sup>. On the second concern, ONPE relocated 14 polling centers (approximately 45 polling stations) in the VRAEM, due to drug trafficking. According to ONPE, the relocation went smoothly, with ONPE coordinators informing voters about the new location of the polling stations, and there were no indication problems with polling. FP

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<sup>20</sup> The EU EOM further contacted the Legal Services of the National Police, which reported that about 50% of police did not go to vote, for both first and second round. The percentage was considered to be within traditional averages.

decided not to pursue those cases in a judicial manner after the final preliminary results were published.

### **15.3 Closing and Counting**

EU EOM observers assessed the counting process as “very good” or “good” in the majority of polling stations where this was observed and noted that polling station staff carried out their duties according to procedures. The drafting of electoral operations protocols was far less cumbersome as only one election was being held. The EU EOM noted a decrease in the number of protocols with material errors.

#### **16.3. Role of party agents and observers**

Party Agents were present at most observed polling stations during voting and counting. Presented with shortfalls in sufficient numbers of agents, parties were observed to sometimes recruit untrained agents from the queue of voters on Election Day. Once again, the presence of party agents during the aggregation of results at ODPEs was minimal.

### **15.4 Results Aggregation**

EU EOM members followed the handover and digitalisation of results protocols in nearly half of the country’s 60 ODPE aggregation centres and assessed this process as “very good” or “good” in the majority of cases. Throughout the evening on Election Day, the ONPE offered several updates of the aggregation process, and by the following morning had processed over 90% of results. The ONPE carried out this process efficiently and transparently, with the presence of party agents. EU EOM analysts were present throughout the results aggregation stages and stayed in contact with representatives of both presidential candidates to ensure whether they were satisfied with the results management process. By day four of the aggregation process ONPE had processed 100% of the 77,307 results protocols and had sent 1,637 withheld protocols (*actas observadas*) to the JEEs for adjudication. The aggregation could only be completed by ONPE once appeals subsequent to JEEs decisions had been addressed by the JNE and decisions on all observed protocols had been considered in the aggregation by the ODPEs. As such the proclamation of final results took place on 28 June, more than three weeks following the run-off election.

The four-day period following Election Day was particularly tense as the distance between the two candidates was extremely narrow, leaving open the mathematical possibility for the runner-up of reverting the trend. It was not until ONPE had announced it had processed 100% of results and only awaited decisions from the JEEs regarding withheld protocols that Keiko Fujimori conceded defeat and wished Pedro Pablo Kuczynski and his team good luck. Due to the extreme uncertainty of the results, the overall length of results management process while held in total transparency created tensions and uncertainty that a quicker preliminary result management process could more easily dissipate.

## SECTION VII

### 16. Recommendations

The EU EOM has observed a substantial part of the 2016 electoral process. In a spirit of partnership and cooperation with the government, the electoral authorities of Peru, and the new elected Congress, and as a contribution towards the next electoral process, the EU EOM offers the following suggestions to the dialogue on reform:

#### Legal Framework

##### *1. Consolidation of the electoral legislation in a single and coherent Electoral Code*

It would be important to consider the adoption of a **unified and coherent electoral and procedural code** to eliminate inconsistencies and legal voids and enhance transparency, accountability, equal participation and level playing field; a possible starting point could be the material produced from prior draft laws and public discussions.

##### *2. Limit the time-window for changes the legal framework during electoral processes*

Consider the introduction of a time **limit for changes to the legal framework before elections** (for example, six months before elections are called) to allow for legal certainty and enhance confidence in and during the electoral process.

##### *3. Increase guarantees to provide maximum effect to the right to vote*

It would be advisable to introduce an adequate mechanism to **facilitate suffrage for all eligible voters**, including those working in the electoral process (police, armed forces, electoral workers), those who are hospitalised or in preventive detention, and those who acquire voting age after the registration cut-off date.

##### *4. Facilitate cooperation with National and International Observation*

In order to facilitate the cooperation with observation groups, it is suggested to amend section e) of Article 339 of the Organic Electoral Law prohibiting observers to request information or official documentation from the JNE. It would be important to ensure full access to information to observers and not condition it to the good will of the electoral authorities.

#### Political-Electoral system

##### *5. Political parties and candidates' eligibility*

It is highly recommended to determine the **eligibility of parties and candidacies sufficiently in advance** to avoid suspending candidates' rights to political participation during the campaign.

#### *6. Gradual sanctions for violations by political parties*

It would be advisable to **establish progressive sanctions for violations of the Political Party Law** or rules on internal democracy and provide gradual alternatives to the drastic and immediate exclusion of parties and candidates.

#### *7. Political Parties' internal democracy*

It could be beneficial to consider whether mechanisms of internal democracy could be introduced to make **political parties primaries mandatory, transparent and open to all party supporters**, avoiding that party leaders decide autonomously on candidatures; there are various forms of primaries that could be considered, one modality that seems to find consensus in Peru, would include to entrust the electoral authorities with the logistical organisation of polling and counting the results.

#### *8. Equal Treatment of Internal Political Party Democracy Rules*

In order to facilitate equal treatment of all internal political party processes, consider **introducing petitions by party members only for violating internal democracy requirements** that could ease equal treatment of all contestants.

#### *9. Parties and Candidates' Registration*

Consider that a registration to stand in an electoral process is equivalent to a full act of participation to the process and therefore those who withdraw in the process should be considered as taking full part to it.

### **Electoral Justice**

#### *10. Timely adjudication for petitions and electoral calendar phases*

The **swift and timely adjudication of petitions** and appeals could be regulated to avoid pending proceedings to affect subsequent phases of the process, namely registered candidates while campaigning. While a certain degree of overlap within electoral phases is unavoidable, it is suggested that the calendar should be adjusted to **allow key steps of the process in an electoral phase to be finalised before the start of subsequent phases**. This would avoid overlapping and legal uncertainty reverberating over the following stages of the process.

#### *11. Mandate and terms of appointment for Special Electoral Juries*

Serious consideration could be given to **review the temporary nature, composition and mandate of JEEs**; consider a permanent JEE presence at the departmental level, overseen by civil servants with professional proficiency in electoral justice. **Fully incorporate JEEs into a hierarchical electoral justice system** presided over by the JNE for reducing functional weaknesses and ensuring an even and common approach to decision-making.

#### *12. Clear identification of electoral violations and related graduation of sanctions*

It would be extremely important to improve the content of article 42 of the LOP (Law 30414) in order to introduce **clear and precise definitions of vote-buying, categories of electoral**

**offences and graduation of sanctions** in line with the principles of reasonability and proportionality.

*13. Candidates verification violations*

The graduation of sanctions could also be considered in regard to the procedures for the submission of candidates CVs. It would be advisable to conclude the **CV verification process before the start of the campaign**, foreseeing also a period for providing additional clarifications and missing information.

**Electoral System**

*14. Clarify and reduce the electoral thresholds*

Consideration should be given to the establishment of two different thresholds, one for the maintenance of party registration and another one for the assignment of seats in Congress. **The current legal wording for electoral thresholds is ambiguous** and should be explicitly clarified. Alternatively, there could be a single threshold serving both purposes.

*15. Seats allocation in the Congress*

As for the distribution of seats, it is advisable to **lower the national threshold to distribute seats in the Congress**, or alternatively to consider the creation of a regional threshold, for it appears excessive for parties whose vote is concentrated in few departments.

*16. Increase the political participation of indigenous groups*

It would be important to consider measures to **increase the political participation of indigenous people and their representation in elected offices** by implementing affirmative actions (such as the introduction of quotas, set-aside seats, or fixed number of candidates in the upper part of the candidates lists) to guarantee their representation in elected institutions, including in the Congress and the Andean Parliament.

*17. Increase representation of women in political organisations*

It would be important to **implement gender quotas within political party structures and their decision-making bodies as a legal prerequisite for the registration as political organisations** and parties primaries. Consideration should be given to the introduction of legal requirements to rank women high in party list, for example alternative ranking order for the highest upper part of the lists.

**Political Party Finance**

*18. Expand the upcoming introduction of public funding, and set clear thresholds for private funding to political parties*

In order to make the upcoming implementation of public funding provisions effective, it would be necessary to improve the overall transparency, accountability and fairness in political financing. It is advisable to increase the envisaged levels of public funding to **allow parties and candidates to have sufficient resources to run operational activities**. The

rules regarding **donations and private contribution need to prevent explicitly common ways of bypassing thresholds limits and reporting duties**. It is also recommended to introduce reasonable campaign spending limits for candidates, parties and alliances.

*19. Establish an effective monitoring and auditing system*

It would be important to provide the political finance system with a **functioning monitoring and auditing system managed by the electoral authority with enforcement powers**. The current prerogatives and resources of ONPE can only allow for an ex-post reporting that does not offer any real incentive to parties to comply with reporting timelines and complete information

*20. Institutional transparency in political party financial systems*

The Financial Intelligence Unit (UIF) should have “ad hoc” access to the **lifting of bank secrecy and timely access to the tax reserve**, and be allowed to share such information with the electoral institutions. Anonymous donor contributions should be abolished. All contributions could be nominal and channelled to political parties’ dedicated treasurers. Consider the **introduction of specific disclosure forms** for each candidate and to introduce a system for effective monitoring, auditing and progressive sanctioning in case of violations.

## **Electoral Administration**

*21. Improvement of functional design and institutional knowledge of electoral bodies*

Future electoral reform could **include an improved functional design of electoral bodies** to avoid conflict arising from inconsistent legislation and duplication of competencies, as is the case with electoral supervision and auditing, civic and voter education, and verification of signatures for registration of political organisations. The practice of maintaining key civil servants in their roles for different electoral cycles could be strengthened.

*22. Automated results transmission*

It is advisable to **improve results management efficiency** by continuing to extend the Automated Count System (*Sistema de Escrutinio Automatizado*, SEA); this would hold the added value of drastically reducing the number of observed results protocols, effectively speeding up the aggregation of results process. This could be considered as an additional stage towards full nationwide implementation of electronic voting.

*23. Introduce digital results protocols*

It would be important to **speed up the results systems by introducing digital results protocol** to be transmitted over secure dedicated communication servers, at least for preliminary results announcements. Consideration can as well be given to reduce the number of original protocols to be completed by polling station staff in order to decrease the number of observed protocols due to human error.

#### *24. Electronic voting*

It would be important to **fully involve political parties and other electoral stakeholders** in the steps taken by ONPE for the introduction of new voting technologies. Earlier information sharing mechanism could be envisaged to ensure adequate knowledge dissemination on the various stages of the process

#### *25. Electronic voting audits*

In the progressive development of this voting modality, greater confidence could be generated by **conducting full external audit systems** a few months before elections and immediately after each election, with the participation of universities and civil society organisations. Additional measures such as random audits of electronic voting machines on election day may become also necessary as the country move towards a nationwide implementation.

#### *26. Public procurement process for electronic voting*

It would be equally important to ensure **full transparency of expenditure and procurement processes** for software design and hardware acquisitions at all stages of the electronic voting system implementation, including maintenance and upgrade.

#### *27. Polling site management*

A. The reduction of disproportionate **delays in opening polling stations** could be achieved by declaring non-present members absent at the 08h00 opening time, instead of waiting until 08h30 to replace them, and undertake to substitute these with trained reserve members from adjacent polling stations. It would also be advisable to **provide polling station staff with financial incentives to reduce absenteeism**, late opening of polling stations and replacement of appointed staff with untrained voters from the queue.

#### *28. Polling Staff Training*

Even though the legal framework places the responsibility on selected polling station members to contact ONPE for training and accreditation, **the electoral authority could strengthen its cascade information and training campaign for polling station members** and avoid to rely excessively on internet-based applications for those segments of the population that do not have internet access.

#### *29. Voter Education*

It would advisable to enhance civic and **voter education efforts by adopting a more practical and interactive approach**. Consideration could be given to conduct a study to identify reasons for the high number of invalid ballots in congressional elections and take corrective action to rectify it, by for example incorporating sample ballots in voter education activities.

#### *30. Voter Information*

Consider the inclusion of **comprehensive programs in schools** on issues of civic and political rights and understanding of the democratic process; this could include training and

resources for establishing Youth Councils. Consider the **systematic introduction of material and videos in different minority languages**.

### *31. Presidential Debates*

To continue with the effort to provide the best possible information to voters, it would be ideal to **introduce an obligation to hold presidential debates into the regulatory framework** to ensure their useful contribution in future electoral processes, to be organised in a collaborative effort with civil society organisations.

## **Media**

### *32. Limitation of penalties for freedom of expression offenses to more serious and obvious cases*

Consideration could be given to prevent self-censorship and improve the conditions for press freedom. The Peruvian authorities, especially the Congress, could consider reforming the penal code to **decriminalize freedom of expression offenses** or limit them to more severe and evident cases. It is advisable that sanctions are not applied with regard to those forms of expression that by their nature cannot be verified, such as comments about public figures or interpretation of facts. The EU EOM also underlines that a too broad interpretation of defamation contributes to self-censorship and – during elections – may limit the right of the voters to be informed.

### *33. Free of charge political advertisement at the regional level*

It is advisable to further enhance access of political actors to the media. This could be achieved if media legislation **could better guarantee the minimal access of the political actors to regional audiovisual media**. This could be done, for example, by introducing regional airtime (*franja electoral*) in the Congress elections. The EU EOM believes that a possible introduction of such spots would contribute to more equal access for each electoral list to local media, allow candidates in provinces to disseminate their messages and offer voters more access to information.

**ANNEX I**  
**Recommendations Reference Table**

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>LEGAL FRAMEWORK</b>					
1	<p><b>Electoral Legislation</b> The electoral legislation is dispersed in a number of different laws that are not often reorganised in a coherent framework. This recommendation has an overarching value, as it would affect all others. It was made in 2011 as well.</p>	<p>Consider the consolidation of all electoral legislation in a <b>single and coherent Electoral and Procedural Code.</b></p>	<p>Legislative Level - Drafting of a unified and coherent electoral and procedural code. This would eliminate inconsistencies and legal voids and enhance transparency, accountability, equal participation and level playing field; a possible starting point is the material produced from prior draft laws and public discussions</p>	<p>To eliminate all loopholes and inconsistencies that currently affect the electoral process and facilitate the neutral and technical role of the electoral administration in implementing elections.</p>	<p>ICCPR, Articles 2.2 and 3 Ensure necessary steps to ensure electoral rights Principle of Equality</p>
2	<p><b>Electoral Framework Changes</b> The need for thorough reforms is not new, but the debate at the Congress level is traditionally delayed until the pre-election period, with mounting pressure to pass incomplete and not thorough amendments.</p>	<p>Contribute to ensure the certainty of legal framework during electoral processes and <b>prohibit changes in the framework for elections</b> in the year before elections.</p>	<p>Legislative level - Introduction of a time limit for changes to the legal framework before election (for example, six month before elections are called) would avoid falling again in the temptation to pass legislative amendments that are not completed</p>	<p>To avoid last minute changes in the electoral process that generate problems of interpretation and open the floor to abuses</p>	<p>ICCPR, Articles 2.2 and 2.3 Ensuring legal certainty and predictability Rule of Law</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>LEGAL FRAMEWORK</b>					
3	<p><b>Voters' Eligibility</b> Take the necessary steps to ensure the right to vote for all eligible categories</p>	<p>Mechanisms to <b>facilitate suffrage for all eligible voters</b>, including those working in the electoral process (police, armed forces, electoral workers), those who are hospitalised or in preventive detention, and those who acquire voting age after the registration cut-off date</p>	<p>Legislative level – Create conditions for voting for those working in the electoral process (police, armed forces, electoral workers); in hospital or in preventive detention, and voters who acquire voting age after the registration cut-off date</p>	<p>Take positive measures to ensure the full implementation of voting rights, also for those categories that are on the line of duty on election day</p>	<p>ICCPR, Article 25 Right and Opportunity to Vote American Convention of Human Rights, Article 23 b Principle of Universal Suffrage</p>
4	<p><b>International and National Observation</b></p>	<p>It is suggested to change the law which prohibits observers to request information or official documentation from the JNE</p>	<p>Legislative level - Amend section e) of Article 339 of the Electoral Law</p>	<p>To ensure full cooperation and access to information to national and international observation throughout the process and do not subordinate access to information to electoral authorities 's goodwill</p>	<p>ICCPR, article 25 Right and Opportunity to Participate in Public Affairs UNCAC, article 5 Transparency and the Right to Information</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>POLITICAL – ELECTORAL SYSTEM</b>					
5	<p><b>Candidates ‘eligibility.</b> In the 2016 elections, the party <i>Todos por el Perú</i> was excluded from the general elections during the campaign for not having met its own internal democracy rules. This type of sanction is effective only if imposed in due time, before campaign.</p>	<p>Determine the eligibility of parties and candidacies sufficiently in advance to ensure adequate relevance to the right to participate in the elections and eventual redress measures</p>	<p>Legislative Level - Amend Political Organisations Law to ensure that political rights are fully guaranteed and not subordinated to administrative infractions.</p>	<p>To avoid suspending candidates’ during campaign for irregularities that should have been sanctioned in a previous phase of the process</p>	<p>ICCPR, Article 25 Right and Opportunity to Be Elected, Right and Opportunity to Vote, Right and Opportunity to Participate in Public Affairs Article 3, Right to an Effective Remedy</p>
6	<p><b>Gradual sanctions for violations by political parties.</b> This amendment would be important for a number of current minor violations of the Political Organisations Law that currently envisage directly the party and candidates ‘exclusions.</p>	<p>It is suggested to introduce <b>progressive and proportionate sanctions for violations of the Political Party Law</b> as for instance regarding the rules on internal democracy, parties and candidates</p>	<p>Legislative Level - Amend Political Organisations Law to establish gradual and proportionate sanctions</p>	<p>To ensure certainty of the law, respect of the eligibility requirements for candidates while avoiding manipulation of the systems with last minute-challenges of exclusions aimed at destabilising the system and creating confusion.</p>	<p>ICCPR, Article 25 Right and Opportunity to Elect and Be Elected, Proportionality of Sanctions American Conv of Human Rights, Art 2</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>POLITICAL – ELECTORAL SYSTEM</b>					
7	<p>Political Parties’ internal democracy The Political Party Law establishes that parties cannot offer more than 25% of the positions in their lists to non-affiliates. However, this provision is nullified by the other allowing party committees to pick candidates according to their own statutory rules, making the 25% limitation irrelevant. Only 30 of the 130 elected members in the Congress are affiliated to the party they ran with.</p>	<p>Consider whether mechanisms of internal democracy could be introduced to make political parties primaries mandatory, transparent and open at least to all party supporters. There are various forms of primaries that could be considered, one modality that seems to find consensus in Peru, would include to entrust the electoral authorities with the logistical arrangements.</p>	<p>Legislative Level - Amend the Political Party Law, Article 24.</p>	<p>To ensure that parties have a more stable and reliable representation in the Congress. To give full viability to the preferential voting system, is important to avoid that parties’ leaders decide unilaterally on candidatures.</p>	<p>General Comment 25 of Article 25 ICCPR, page 26 States should ensure that in their internal management, political parties respect the applicable provisions of Article 25 in order to enable citizens to exercise their rights thereunder</p>
8	<p><b>Internal Political Party Democracy</b> Internal democracy rules of political forces are subject to differing degree of scrutiny</p>	<p>Consider introducing a mechanisms for party affiliates to allow them to <b>challenge their political organisations for violating internal democracy requirements</b></p>	<p>Legislative level – Amend the Law on Political Organisations</p>	<p>To level the playing field and ensure that internal party procedures are respected and scrutinised in the same possible manner for all contestants</p>	<p>ICCPR, Article 2.2 Obligation for the State to take the necessary steps to give effects to rights. General Comment 25 p 26 State should ensure that in their internal management political parties respect applicable provisions Article 26 Equality under the law</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>POLITICAL – ELECTORAL SYSTEM</b>					
9	<p><b>Party and Candidate Registration</b>            In order to avoid the risk of losing registration for not passing the 5% threshold, some parties withdrew from the elections alleging lack of impartiality of the electoral authorities.</p>	<p>Consider that a <b>registration to stand in an electoral process is a full act of participation to the process</b> and therefore those who withdraw in the process are to be considered as taking part to it.</p>	<p>Interpretative level – Different interpretation of Political Organizations Law, Article 13 a/ alternatively amend the article to avoid the confusion</p>	<p>To avoid strategic withdrawals only aimed at safeguarding party registration and avoid defeating the purpose of registering to participate in a process.</p>	<p>ICCPR,            Article 2.2 and 2.3            Right and Opportunity to be Elected without reasonable restriction            Article 25 Right to Equal Suffrage            Article 26            Equality under the law</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL JUSTICE</b>					
10	<p><b>Timely adjudication of petitions</b> The electoral calendar is extremely complex and full of interrelated phases. Effective and timely administration of electoral justice for key electoral phases needs to be ensured to avoid overlaps and allow ex-post implosions of the process or politically motivated arrangements.</p>	<p>The <b>swift and timely adjudication of petitions</b> and appeals could be regulated to avoid pending proceedings to affect subsequent phases of the process, namely registered candidates while campaigning</p>	<p>Regulation level – Amend the JNE procedural regulations on petitions to avoid overlaps and ensure that cases are adjudicated before the next electoral phase begins are solved and not dragged to the ensuing electoral stage</p>	<p>To avoid affecting subsequent phases of the electoral process in a manner that alter the rules of the competition when it has already started</p>	<p>ICCPR article 2.3. Right to an Effective Remedy ICCPR article 14.1 Right to a Fair and Public Hearing ICCPR article 19 Transparency and Right to Information</p>
11	<p><b>Special Electoral Juries</b> Ensure that the Special Electoral Juries are equipped to perform a set of functions throughout the electoral cycle and allow their representatives to grow in their role.</p>	<p><b>Review the temporary nature, composition and mandate of JEEs;</b> consider a permanent JEE presence at the departmental level, overseen by civil servants with professional proficiency in electoral justice.</p>	<p>Legislative level - Amend Law on JNE /or create a new overarching Electoral Code</p>	<p>To establish a coherent system of electoral justice, with consistent interpretations and applications. To allow JEE members to gain adequate electoral knowledge</p>	<p>ICCPR, Article 23 State Must Take the Necessary Steps to Give Effect to Rights UNCAC, Article 1 Prevention of Corruption</p>
12	<p><b>Vote Buying Violations</b> The recent addition of article 42 of the LOP by law 30414 ruling the disqualification of candidates based on vote-buying is disproportionate and discriminatory. It generated dangerous instability in the electoral process</p>	<p>Clearly <b>identify different categories of vote buying and introduce a measure of graduation for their sanctioning.</b> Different types of violations need to be categorized and sanctioned according to the magnitude of the offence committed, leaving only for</p>	<p>Legislative level - Amend article 42 of the Law of Political Organizations</p>	<p>To introduce clarity in the categories of vote buying violations and a graduation of sanctions, which will in turn also avoid politically motivated challenges to</p>	<p>ICCPR article 2.3 Right to an Effective Remedy Article 25 – Right and Opportunity to be elected Rule of law - principles of reasonability and proportionality Additional Protocol to the European Convention on Human Rights, Article 3</p>

		extreme cases the exclusion of a candidate.		candidates.	American Convention on Human Rights, Article 23
No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL JUSTICE</b>					
13	<p><b>Candidates Verification Violations</b></p> <p>The exclusion of candidates during the campaign for minor violations of CV-related information requirements was disproportionate and left the door open to political exploitation and abuse.</p>	<p>Consideration could be given to <b>conclude the verification period of information provided in candidate’s CVs before the start of the campaign</b>, and foresee a period for additional clarification. Evaluate the graduation of sanctions in regard to false information provided in candidates CVs</p>	<p>Legislative level - Amend article 19 of the Law of Political Organizations to include a deadline for the verification of information provided in candidates CVs by the electoral administration</p>	<p>Admissibility rules for candidates and related graduation of sanctions</p>	<p>ICCPR – Article 25 Right and Opportunity to be elected Rule of Law - Principles of Reasonability and Proportionality</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL SYSTEM</b>					
14	<p><b>Electoral Thresholds</b> Two separate legal instruments define the threshold to keep a party's registration and to obtain Congress seats. Despite having a similar wording, they are interpreted differently. <i>Democracia Directa</i> argued that, having passed the threshold to keep the registration, the party should have obtained four Congress seats in Cajamarca and one in Puno.</p>	<p>It is recommended to <b>explicitly establish two different thresholds</b>, one to keep the party's registration and another one to 'participate in the distribution of Congress seats, doing it, if possible, in a unified electoral code. Alternatively, there could be a single threshold for both purposes.</p>	<p>Legislative level - Amendment to the Election and the Political Parties' Law</p>	<p>To introduce clarity on the nature and purpose of each respective provisions and avoid interpretations that can be perceived as political manipulations</p>	<p>ICCPR, Articles 2.2, 2.3 Right and Opportunity to Be Elected without reasonable restrictions ICCPR, Article 25 Right and opportunity to Participate in Public Affairs ICCPR, Article 3, Right to an Effective Remedy</p>
15	<p><b>Seats allocation</b> The party <i>Democracia Directa</i> (DD) won 39.41% of the valid votes in the Cajamarca department. Without national threshold, this would have meant four Congress seats that were allocated to the second top vote-getter party.</p>	<p>It is advisable to <b>reduce the national threshold to distribute Congress seats</b> or, alternatively, to <b>establish a complementary regional threshold.</b></p>	<p>Legislative level - Amendment to the Constitutional Law Election</p>	<p>To ensure that regional parties that perform well are duly taken into account in a PR system</p>	<p>ICCPR, articles 2.2, 2.3 Right and Opportunity to Be Elected without reasonable restrictions ICCPR, article 25 Right and opportunity to Participate in Public Affairs Right to Equal Suffrage</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL SYSTEM</b>					
16	<p><b>Indigenous Peoples</b> The positive efforts to increase participation of indigenous populations remain marginal</p>	<p>It would be important to <b>implement affirmative actions</b> such as the introduction of quotas, set-aside seats, or fixed number of candidates in the upper part of the candidates lists, to guarantee their representation in elected institutions</p>	<p>Legislative level - Amend Electoral Law</p>	<p>To guarantee adequate representation of minority groups in elected institutions, including Congress and Andean Parliament</p>	<p>ICERD, Article 5 c The right to participate in elections, to vote and to stand for elections on the basis of universal and equal suffrage without discrimination based on race</p>
17	<p><b>Political Participation of Women</b> Despite the political party quotas and the encouraging increase of represented women, their overall participation in public life remain below their population quota and party leadership do not take enough affirmative action to support a change of course</p>	<p>Consider how to move towards <b>implementation of gender quotas</b> within political party structures and their decision-making bodies <b>as a legal prerequisite for the registration as political organisations and parties primaries</b>. Consideration should be given to the introduction of legal requirements to rank women high in party list, for example with alternative ranking order for the top 10 positions in each party list</p>	<p>Legislative level - Amend Political Party Law</p>	<p>To give proper implementation to the positive measures required by ICERD and ensure a more comprehensive participation of women in all spheres of political life. The inclusion of such quota component in the primaries can change the traditional habits around women participation.</p>	<p>ICCPR, Article 3 Equality of men and women in the enjoyment of all civil and political rights  CEDAW Article 4, 1 Equality of men and women. Women representation in all spheres of political representation</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>CAMPAIGN FINANCE</b>					
18	<p><b>Public and Private Funding for Political parties</b> Peru has provision for public funding since 2007. In practice political organisations have not received any public funds.</p>	<p>In order to make the upcoming implementation of public funding provisions effective, it would be necessary to improve the overall transparency, accountability and fairness in political financing. It is advisable to increase the envisaged levels of public funding to <b>allow parties and candidates to have sufficient resources to run operational activities</b>. The rules regarding <b>donations and private contribution need to prevent explicitly common ways of bypassing thresholds limits and reporting duties</b>. It is also recommended to introduce reasonable campaign spending limits for candidates, parties and alliances.</p>	<p>Legislative level - Article 29, Law on Political Organisations (LOP)</p>	<p>To strengthen political parties' life, ensure funding for research &amp; development and equality of opportunity. To prevent political finance-related involvement of funds from illicit activities, and increase the institutionalization of the parties.</p>	<p>ICCPR, Article 25 Right and opportunity to participate in Public Affairs, Right and opportunity American Convention on Human Rights, article 23 Equal opportunities to access public posts</p>
19	<p><b>Effective Monitoring and Auditing</b> The insufficient transparency and accountability in political party financing during election campaign does not contribute to a level playing field between candidates and political organisations. The current attributions of ONPE cannot discourage parties from incomplete and later reporting, and ONPE can only publish the information it receives</p>	<p>It would be crucial for a mixed system to establish <b>clear monitoring and enforcement powers for the electoral authority</b>. The rules regarding donations and contributions need to prevent, explicitly, common ways of bypassing threshold limits and reporting duties. Introduce reasonable campaign spending limits for political parties and inclusion of effective, proportionate and dissuasive sanctions for violation of campaign finance provisions.</p>	<p>Legislative level - Article 36 Law on Political Organisations</p>	<p>To establish an effective system of financial control and auditing which verifies not only submitted records, but also their completeness, accuracy and correspondence with real expenditures and revenues.</p>	<p>ICCPR, article 25 Reasonable limitations on campaign expenditure  UN Convention Against Corruption (UNCAC), article 1 Prevention of Corruption, article 7 Equality of campaign opportunities and transparency American Convention on Human Rights, article, 2, 16 and 23 Equal opportunities to access public posts</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>CAMPAIGN FINANCE</b>					
20	<p><b>Institutional Transparency</b> The sharing of information between different institutions of the state is the key to introduce transparency and allow effective monitoring from electoral institutions</p>	<p>The Financial Intelligence Unit (UIF) should have “ad hoc” access to the <b>lifting of bank secrecy and timely access to the tax reserve</b>, and be allowed to share such information with the electoral institutions. Anonymous donor contributions should be abolished. All contributions must be nominal and channelled to political parties’ dedicated treasurers. Consider the introduction of specific disclosure forms for each candidate and introduce a system for effective monitoring, auditing and progressive sanctioning in case of violations.</p>	<p>Legislative level - Article 36 Law on Political Organisations New articles are needed</p>	<p>To introduce a system of monitoring and campaign expenditure controls that awards the virtuous parties and promote financial transparency as a political value. To equip ONPE with adequate means to fulfill its mandate and ensure its effectiveness</p>	<p>UNCAC, Article 7 Equality of campaign opportunities and transparency</p> <p>UNCAC, Article 13 Provide effective access to information</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL ADMINISTRATION</b>					
21	<p><b>Electoral Administration Structure</b> The electoral management bodies have undergone a number of functional adjustments over the years and in the past suffered from overlapping and duplication of competences.</p>	<p><b>Improve the functional design of electoral bodies</b> to avoid conflict arising from inconsistent legislation and duplication of competencies, as is the case with electoral supervision and auditing, civic and voter education, and verification of signatures for registration of political organisations.</p>	<p>Legislative level - Amend law on JNE, ONPE and RENIEC, /could be included in the adoption of the new electoral Code</p>	<p>To enhance cooperation and optimization of task distribution among electoral authorities and complete the harmonization of functions</p>	<p>ICCPR, Article 2.3 State Must Take the Necessary Steps to Give Effect to Rights</p>
22	<p><b>Results Management</b> The result systems still requires a number of transitions and procedures that slow down aggregation at the department and national level, causing unnecessary uncertainty and open the door to systemic complaints</p>	<p>It is advisable to <b>improve results management efficiency</b> by continuing to extend the Automated Count System (<i>Sistema de Escrutinio Automatizado</i>, SEA). Consideration should be given to introduce an overall system of preliminary results managed by ONPE.</p>	<p>Regulatory and procedural level – Amend JNE regulations and ONPE procedures</p>	<p>To increase the speed of the count and aggregation process while maintaining transparency and efficiency. To drop the number of challenged protocols</p>	<p>ICCPR, Article 19 Transparency and Right to Information UNCAC, Article 13 Access to Information for the Public</p>
23	<p><b>Results Protocols</b> The aggregation of results is still based on paper-based protocols that contradicts the overall long-terms plan to introduce electronic voting</p>	<p>It would be important to <b>speed up the results systems by introducing digital results protocols</b> to be transmitted over secure dedicated communication servers, at least for preliminary results announcements. Consideration can as well be given to reduce the number of original protocols to be completed by polling station staff in order to decrease the number of observed protocols due to human error.</p>	<p>Regulatory and procedural level – Amend JNE regulations and ONPE procedures</p>	<p>To reduce the possibilities for manipulation and reduce the overall aggregation times for results publication</p>	<p>ICCPR, Article 19 Transparency and Right to Information; Article 25 Right and Opportunity to Participate in the Conduct of Public Affairs</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL ADMINISTRATION</b>					
24	<p><b>Electronic Voting Operations</b> The political parties demonstrated disinformation about the electronic voting process and demanded ONPE to scale down the progressive introduction of electronic voting</p>	<p>On the road towards a larger implementation, highly important is the thorough <b>involvement of political parties in the steps taken by ONPE for the introduction of new technologies</b> Earlier information sharing mechanism could be envisaged to ensure adequate knowledge dissemination on the various stages of the process.</p>	<p>Regulatory and procedural level – Amend ONPE electronic voting regulations and procedures</p>	<p>To ensure adequate information among stakeholders and avoid last-minute criticisms based on lack of knowledge of the system being implemented.</p>	<p>ICCPR, Article 19 Transparency and Right to Information; Article 25, Right and Opportunity to Participate in the Conduct of Public Affairs</p>
25	<p><b>Electronic Voting System Audits</b> There has been no public auditing of the system, and while criticisms have remained latent, it may easily become very vocal. In view of a larger implementation, it is necessary to introduce full systems audits and publicise its results</p>	<p>In the progressive development of this voting modality, greater confidence could be generated by <b>conducting full external audit systems</b> a few months before elections and immediately after each election, with the participation of universities and civil societies.</p>	<p>Regulatory and procedural level – Amend electronic voting regulations to ensure full system external audits as referenced in ISO procedures</p>	<p>To increase the overall transparency of the system, improve the system and minimize possibilities of manipulation from within</p>	<p>ICCPR, Article 19 Transparency and Right to Information; UNCAC, Article 1 Prevention of Corruption Article 5.1 Enhance Transparency in Public Administration</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL ADMINISTRATION</b>					
26	<p><b>Public procurement process</b> There has been almost no information circulated on the software solutions adopted by ONPE to develop the e-voting system and related procurement processes</p>	<p>It would be important to ensure <b>full transparency on expenditure and procurement processes</b> for software design and for full system implementation, including maintenance and upgrade</p>	<p>Regulatory and procedural level – Amend ONPE electronic voting regulations and procedures</p>	<p>To enhance the stakeholders’ confidence in the overall long-term plan and ensure transparency and added value for its high costs</p>	<p>ICCPR, Article 19 Transparency and Right to Information; UNCAC, Article 1 Prevention of Corruption Article 10 Enhance Transparency in Public Administration</p>
27	<p><b>Polling Site Management</b> The delays in opening polling stations is a well-known issue that requires more proactive involvement from the electoral authority in solving the problem Polling regulations places the responsibility on selected polling station members to contact ONPE for training and accreditation. This requires more proactive involvement from the electoral authority in motivating poll workers</p>	<p>The reduction of disproportionate <b>delays in opening polling stations</b> by declaring non-present members absent at the 08h00 opening time, instead of waiting until 08h30 to replace them, and undertake to substitute these with trained reserve members from adjacent polling stations. It would also be advisable to <b>provide polling station staff with financial incentives to reduce absenteeism</b>, late opening of polling stations and replacement of appointed staff with untrained voters from the queue.</p>	<p>Regulatory and ONPE Procedural level – Establish procedures that would allow a more effective management of available poll workers and provide minimal wage</p>	<p>To solve the long-drawn issue of late openings and late operations and allow for more orderly polling and prevent problems. To better distribution of responsibilities between ONPE staff and polling station workers. To ensure adequate attention and understanding of procedure and political parties maneuvering to place their affiliates in polling stations</p>	<p>ICCPR, Article 25 -Right and Opportunity to Vote General Comment to art 25: Positive measures should be undertaken to allow voters to exercise their rights</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL ADMINISTRATION</b>					
28	<p><b>Polling Staff Training</b> The current forms of training are of limited effectiveness as they heavily rely on Internet and active involvement of selected staff. This is not sufficient to ensure adequate coverage and capacity, as only half of population has internet access in Peru and much less familiarity with self learning techniques.</p>	<p>The <b>Electoral authority could strengthen its information and training campaign for polling station members</b></p>	<p>Regulatory and procedural level - This could be corroborated with the necessary practical action that electoral authority needs to undertake to ensure the service</p>	<p>To ensure smoother and faster operations, reduce challenged protocols and ensure quicker management of the entire process. To reduce over-reliance on inter-based programs that are not yet fully included among the electoral habits of the voters</p>	<p>ICCPR art 2.2 State must Take the Necessary Steps to Give Effect to Rights; ICCPR art 19.2 Transparency and Right to Information.</p>
29	<p><b>Voter Education</b> The efforts that are done in this domain could be further rationalised and reproduced in different languages to encourage stronger minority participation</p>	<p>Within the framework of efforts aimed at increasing representation and participation, <b>civic education activities could also include comprehensive programs in schools</b> on issues of civic and political rights and understanding of the democratic process in different languages.</p>	<p>Legislative and regulatory level - Amend JNE and ONPE Laws and/or include the provision in the new Electoral Code including training and resources for establishing Youth Councils.</p>	<p>To enhance participation of all marginalized groups anywhere in the territory of Peru</p>	<p>ICCPR art 19.2 Transparency and Right to Information; UNCAC art 13, State to take appropriate measures to ensure active access to information</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>ELECTORAL ADMINISTRATION</b>					
30	<p><b>Voter Information -</b> The percentage of invalid ballots remain exceptionally high, despite the uncertainties with the candidates list</p>	<p><b>More practical and interactive approach for civic and voter education efforts</b> Consideration could be given to conduct a study to identify reasons for high number of invalid ballots for congressional elections and take corrective action</p>	<p>Regulatory level – Introduce changes that could, for example, incorporate new sample ballots based on usability survey studies in voter education activities.</p>	<p>To reduce the historically high number of invalids ballots and guarantee maximum representativeness to the results</p>	<p>ICCPR art 19.2 Transparency and Right to Information; UNCAC art 13, State to take appropriate measures to ensure active access to information</p>
31	<p><b>Presidential Debates</b> The collaborative form the JNE chose to organise the debates and decide their agenda was an important step forward in the public information effort and managed to introduce regional themes. These good practices need to be consolidated and turned into standard procedures</p>	<p>To continue with the effort of providing the best possible information to voters, it would be ideal to <b>introduce procedures to hold presidential debates into the regulatory framework</b>, to be organised in a collaborative effort with CSOs.</p>	<p>JNE Regulations could detail how to organize the debates in a collaborative effort and describe the propositive role of the civil society groups to ensure their active participation in shaping the debates’ agendas</p>	<p>To crystallise the positive gains obtained with the past organizations of debates and ensure that a permanent system of collaboration in their organization. To guarantee the insertion of regional issues in the presidential debates</p>	<p>ICCPR art 19.2 Transparency and Right to Information; Art 2.2 State must Take Necessary Steps to Give Effect to Rights</p>

No.	Context	Recommendation	Change in the Legal Framework Required	Purpose	Key International Obligation
<b>MEDIA</b>					
32	<p><b>Media Regulatory Framework</b> The Peruvian Penal Code provides for prison sentences for ‘crimes against honor’, such as libel, slander, and defamation. The cases of Rafael León and Fernando Valencia show that some courts seem to have adopted a too broad definition of these crimes.</p>	<p>It would be important to prevent and <b>limit self-censorship and improve the freedom of press</b>. The Peruvian authorities, especially the Congress, could consider reforming the penal code to decriminalize press offenses or limit them to more severe and evident cases.</p>	<p>Legislative level - Amendment to the Peruvian Criminal Code</p>	<p>To ensure a more comprehensive freedom of opinion throughout the democratic process of a country and not only for the limited events of an electoral process.</p>	<p>ICCPR, article 19, Freedom of Opinion and Expression  General comment No. 34, 12 September 2011, CCPR/C/GC/34, point 47</p>
33	<p><b>Media Regulatory Framework</b> Paid coverage of political parties’ activities, in conflict with the existing legal framework, seems to be a widespread practice in some of the local media. This phenomenon, combined with a general absence of coverage of the regional candidates by the national media, may have left many voters in some districts without sufficient information.</p>	<p>In order to ensure access of political actors, the law could <b>better guarantee the minimal access of the political actors to regional audiovisual media</b>. This could be done, for example, by <b>introducing regional free airtime (<i>franja electoral</i>) in the Congress elections</b>. Respect of the existing legal framework could be used as precondition for reimbursing the air-time programs by the State authorities</p>	<p>Legislative level - Amendment to the Law on Political Parties</p>	<p>To guarantee adequate freedom of expression and adequate means to the rights of information in all the regions of the country, about local political issues that could be of even greater interest for the voters than nation-wide themes</p>	<p>ICCPR, article 19, Freedom of Opinion and Expression  ICCPR, article 25 Commented in the Code of Good Practice in Electoral Matters, European Commission for Democracy through Law (Venice Commission), Opinion 190/2002, CDL-AD(2002)023rev, Strasbourg, 23 May 2003, p. 20</p>

## **DIGITAL ANNEXES**

(Available at [www.moeue-peru.eu](http://www.moeue-peru.eu))

**ANNEX II. Media Monitoring Consolidated Data - 1<sup>st</sup> Round**

**ANNEX III. Media Monitoring Consolidated Data - 2<sup>nd</sup> Round**

**ANNEX IV. Consolidated Election Observation Data - 1<sup>st</sup> Round**

**ANNEX V. Consolidated Election Observation Data - 2<sup>nd</sup> Round**

**ANNEX IV. Consolidated Statistics of Electoral Appeals**