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NOTE FROM THE SECRETARY GENERAL TRANSMITTING THE REPORT OF
THE ELECTORAL OBSERVATION MISSION IN PERU

(2000 General Elections)

This document is being distributed to the permanent missions and
will be presented to the Permanent Council of the Organization.



Organización de los Estados Americanos
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Organization of American States

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December 12, 2000

Excellency:

I have the honor to submit to Your Excellency the report of the OAS Electoral Observation Mission in Peru and to kindly request its distribution to the members of the Permanent Council. The report reflects the activities undertaken by the Mission during the observation of the general elections in Peru, held on April 9, 2000.

Please accept, Your Excellency, the renewed assurances of my highest and most distinguished consideration.

César Gaviria
Secretary General

His Excellency
Peter M. Boehm
Ambassador, Permanent Representative
of Canada
Chairman of the Permanent Council of the
Organization of American States
Washington, D.C.

ORGANIZATION OF AMERICAN STATES

REPORT

ELECTORAL OBSERVATION MISSION IN PERU

2000 GENERAL ELECTIONS

Unit for the Promotion of Democracy

Contents

I.	Introduction	1
II.	The OAS Electoral Observation Mission	3
III.	Political and Legal Context	5
	1. Legal Framework.....	5
	2. Political Framework	6
	2.1. The candidacy of the President.....	6
	2.2. Situation of the Judiciary and the Attorney General’s Office	7
	2.3. Use of public funds and State assets for electoral purposes	8
	2.4. Anomalies in the electoral agencies. The case of the forged signatures.....	8
	2.5. Involvement of the Armed Forces in the election process.....	9
	2.6. Lack of equitable access to the mass media.....	9
IV.	First Round of Elections	11
	1. Pre-election period.....	11
	2. Election day	16
	3. Close of the polls and vote counting.....	18
	4. Vote-tallying system.....	19
	4.1. Background.....	19
	4.2. First round.....	21
	5. Delivery of recommendations.....	25
V.	Second Round of Elections	26
	1. Background.....	26
	2. Creation of working groups	26
	3. Electoral training	27
	4. Election management	30
	4.1. Background.....	30
	4.2. Problems identified.....	31
	4.3. Conclusions.....	37
	5. Vote-tallying system.....	37
	5.1. Background.....	37
	5.2. Objectives	38
	5.3. Methodology.....	38
	5.4. Conduct of the work	39
	5.5. Conclusions.....	39
	6. Reports requested of the ONPE.....	42
	7. Legal and electoral considerations regarding the timing of the second round of elections.....	43
	8. The frustrated possibility of postponing the date of the second round of elections.....	44
	9. Other considerations	45

VI.	Assessment of access to the mass media	47
	1. Background.....	47
	2. Problems, recommendations and measures implemented in the second round of elections	47
	3. Assessment	52
VII.	Electoral Complaints	54
	1. Receipt and handling	54
	2. Principal complaints	56
	3. Complaints collected by observers of the EOM/OAS on election day in the first round	61
VIII	Assessment and Recommendations	63
	1. Overview	63
	2. Problems detected and tasks carried out.....	64
	3. Conclusions	66
	4. Recommendations	68
IX.	Preliminary Financial Statement	69
X.	Annexes¹	70
	1. Agreements between the GS/OAS and the Government of Peru concerning privileges and immunities of the observers of the electoral process; and between the GS/OAS and the National Elections Panel on the procedure for observation of the electoral process.	
	*2. Executive Summary of the Final Report of the Chief of the Mission (distributed as document AG/doc.3936/00 at the 30th Regular Session of the General Assembly in Windsor, Canada, on June 4, 2000).	
	*3. Recommendations for the second round of elections (document presented to the ONPE and to the Office of the President of the Cabinet).	
	4. Access to the mass media for presidential candidates.	
	*5. Information chart on progress in implementation of recommendations made by the EOM/OAS/PERU during the electoral process.	
	6. Complaints chart.	
	7. Bulletins issued by the EOM/OAS/PERU in the first and second rounds of elections	

1. The annexes marked with an asterisk(*) are attached to this report. Owing to their extensive volume (over 300 pages), not all the annexes are included in this publication. These annexes are available for consultation at the libraries of the OAS and the UPD.

8. Result of the General Elections of April 9, 2000, First Round. Issued by the National Elections Panel.
- *9. Organizational structure of the Electoral Observation Mission for the first and second rounds of elections.
10. Election management
11. Minutes of the working group on electoral training
12. Simulations of the vote-tallying system for the first and second rounds of elections
13. Minutes of the meetings of the working group on the vote-tallying system.
14. Electoral Supervision Report No. 4 of the Ombudsman's Office (Investigation of the use of public funds and the involvement of public officials and employees in campaign activities on behalf of candidates).

I. Introduction

This document is the complete text of the Report of the OAS Electoral Observation Mission for the 2000 General Elections process in Peru. In view of the fact that at the time of the Thirtieth General Assembly in Windsor, Canada (June 4-6), the final version of the present document was under review, an “Executive Summary” was distributed among the Delegations attending that Assembly. (Annex 2)

As the Table of Contents shows, the layout of this document not only tracks the formal and procedural sequence of the OAS Electoral Observation Mission, but also enables the reader to observe the peculiarities of this process and highlights some of the specific tasks that this Mission performed. Accordingly,

- This Report stems from the creation of the OAS Electoral Observation Mission (hereinafter EOM/OAS) at the request of the Peruvian Government, and from subsequent agreements, both between the Permanent Mission of Peru to the OAS in Washington, D.C. and the General Secretariat of the Organization, and between the EOM/OAS itself and Peru’s National Elections Panel (see Annex 1).
- Given the particular circumstances of this election process, it was considered useful to describe key aspects of the legal and political context that overlies the institutional and electoral framework and, which, in the opinion of the EOM, has shaped and/or had an impact on these general elections. This will also help put into perspective the overall conditions in which the EOM/OAS began its work and carried out its observation activities.
- Based on the foregoing the document includes two separate sections devoted to the first and second rounds, respectively. The first covers the period from the start of the activities of the EOM/OAS in the field (March 2) until Friday, April 14, five days after the first round of voting on April 9. The second section covers the period thereafter, from the week after Holy Week until Friday, June 2, the date that the technical group, which is what remained of the EOM/OAS, withdrew from Lima. Both sections highlight aspects connected with those issues that were especially closely monitored by the EOM/OAS, most notably the vote-tallying system.
- It was considered appropriate to devote a separate section to the issue of access to the mass media (Annex 4) based on the findings of the EOM/OAS from its monitoring of this issue on the ground. There is also a separate section on electoral complaints. (Annex 6)
- The main body of the report ends with a section containing overall conclusions and recommendations.

As the information bulletins issued by the EOM throughout its observation activities (see Annex 7) have indicated, the Mission proceeded at all times in a climate of frank and open discussion with the Government of Peru. At no time did it encounter any hindrance or obstacle that might have prevented its access to government institutions.

The above changed radically, however, in the last five days prior to the second round of voting on May 28. Without any explanation whatsoever, the Peruvian authorities ceased all official communication with the Chief of the Mission of the EOM in Lima, a situation that continued unchanged until the latter departed the city on Friday, May 26.

As is known, this Mission's final overall assessment of both rounds of elections is negative. This Final Report provides details of all the irregularities observed that support such an assessment.

II. The OAS Electoral Observation Mission

By means of a note from the Minister of Foreign Affairs, Fernando de Trazegnies Granda to the Secretary General of the Organization on October 22, 1999, the Government of Peru submitted to the OAS a formal request for the Organization's cooperation in electoral observation. On February 28, 2000, an agreement was signed in Washington, D.C., between the General Secretariat of the Organization of American States and the Government of Peru concerning privileges and immunities of the observers of the general elections of April 9, in that country.

In order to comply with the request of the Government of Peru, the Secretary General of the OAS, Dr. César Gaviria, appointed Dr. Eduardo Stein, former Minister of Foreign Affairs of Guatemala, as Chief of the OAS Electoral Observation Mission (EOM).

The Mission arrived in Peru on Thursday, March 2 and the main team set up its headquarters in the city of Lima. Subsequently a multi-disciplinary group was assembled, comprising more than one hundred (100) people from such countries as Argentina, Bolivia, Brazil, Canada, Colombia, Costa Rica, Chile, El Salvador, France, Germany, Guatemala, Japan, Nicaragua, Norway, Panama, Paraguay, United States, Uruguay, and Venezuela. The above group was distributed among 12 regional offices (Arequipa, Ayacucho, Cajamarca, Cuzco, Chiclayo, Huánuco, Huancayo, Huaraz, Iquitos, Lima, Puno, and Trujillo).

The EOM immediately set to work, collecting as much information as it could to ascertain whether the guarantees were in place for the normal development of the electoral process. To that end, meetings were held with electoral, political, government, and ecclesiastical authorities, the Ombudsman's Office, representatives of national and international NGOs, and most of the presidential candidates and the main parliamentary lists.

As a result of those activities, the EOM determined that it was necessary simultaneously to observe the electoral process on two planes: formal aspects connected with its organization and procedures; and the fundamental issue of the guarantees of the electoral process.

After the first round, the EOM maintained a constant presence in Lima, with specialized personnel addressing the issues of vote-tallying, training of polling station officials, election management, and monitoring outstanding issues connected with the congressional elections, as well as those to do with complaints.

For the second round of elections a multi-disciplinary team was assembled, composed of thirty-five (35) people from countries, such as Argentina, Bolivia, Brazil, Canada, Colombia, Costa Rica, Chile, El Salvador, Guatemala, Norway, Panama, Paraguay, United States, and Uruguay.

This group was deployed across the country at regional offices based in the cities of Arequipa, Ayacucho, Cajamarca, Cuzco, Chiclayo, Huánuco, Huancayo, Huaraz, Iquitos, Lima, Puno, Trujillo, Chachapoyas, Ica, Madre de Dios, and Tacna.

The presence of more observers at a greater number of offices than in the first round allowed for improved territorial coverage and implementation of a more active strategy by the Mission, designed to monitor concerns that were highlighted and reported during the first stage of the elections and were still pending solution.

As regards general aspects, the EOM took pains at its various offices to meet regularly with electoral, civil, government, and ecclesiastical authorities, as well as with representatives of the Ombudsman's Office, national and international NGOs, and, of course, with the two candidates for President of the Republic, in order to form an accurate impression of the situation under observation.

Insofar as specific aspects are concerned, the main observation activities entailed monitoring implementation of the agreements of the working groups created by the National Elections Procedures Office (ONPE). These working groups were composed of representatives of the two candidates taking part in the second round of elections, the Ombudsman's Office, and observers from the EOM/OAS, in accordance with the provisions contained in Executive Resolution No. 172-2000-J/ONPE, of April 20, 2000.

III. Political and Legal Context

1. Legal Framework

The Republic of Peru has a single, representative, decentralized government organized according to the principle of separation of powers. The head of the Executive Branch is the President of the Republic, who is elected by direct suffrage for a term of five years. The candidate who obtains more than half of the votes is elected. If no candidate receives an absolute majority, a second ballot is held between the two candidates who have obtained the two highest relative majorities; two vice presidents are elected at the same time as the president.

The Legislative Branch sits in a single-chamber Congress of 120 members, who are elected for a period of five years and may stand for reelection. Congress is elected according to a system of proportional representation, using the minimum common denominator method, with an optional preferential vote.

The 2000 general elections were governed by the 1993 Constitution, Organic Law No. 26859 of 1997 (Elections Law), and other complementary provisions.

By Supreme Decree No. 40-99-PCM, General Elections for President and Vice President of the Republic and for Congress were convened for April 9, 2000. The National Elections Panel determined that there were 47 electoral districts in the Republic. This was the second such election since the enactment of the 1993 Constitution.

Under the Constitution, the Peruvian electoral institutions are responsible for ensuring that elections translate the authentic, free and spontaneous expression of the citizenry and that the vote tallies reflect exactly and in a timely manner the will of the electorate expressed at the polls by direct, secret ballot.

The electoral institutions consist of three autonomous organizations that coordinate with each other in accordance with their functions. Under the Constitution provides these agencies have technical autonomy and are required to coordinate on electoral matters. These agencies are:

National Elections Panel. This body is basically in charge of supervising the legality of the ballot, of electoral processes, of referendums and other popular consultations. It is in charge of administration of justice on electoral matters; its decisions are not open to appeal not may be challenged in the courts. It also passes final judgment on complaints connected with the composition and workings of Special Electoral Panels [*Jurado Especial de Elecciones (JEE)*]. It may issue unappealable rulings partially or totally annulling elections. It also announces elected candidates and the results of referendums and other forms of popular consultation, and issues the respective credentials. The National Elections Panel has the executive right to propose new legislation on electoral matters.

National Elections Procedures Office (ONPE). The main functions of this entity are to organize electoral processes, including referendums and other popular consultations; to coordinate preparation of electoral rolls with the RENIEC; to design ballots, ballot returns and all materials

associated with the elections process; to appoint and provide training for polling station officials; to distribute election materials; to count the ballot and to provide from the start of that process permanent information on the count at polling stations.

National Registry of Identification and Marital Status [Registro Nacional de Identificación and Estado Civil](RENIEC). With respect to elections, this body prepares and keeps updated the electoral roll. It also provides the National Elections Panel and the National Elections Procedures Office (ONPE) with the necessary information to carry out their functions.

2. Political Framework

From the beginning of this election process, candidates of opposition political groupings and international observer missions that preceded the EOM/EOA, pointed out the existence of a series of irregularities and restrictions on the exercise of political and electoral activities in accordance with the law. The candidacy of the President, the use of public funds and State assets for electoral purposes, the various changes in the Judiciary and the electoral organs, and the decisions adopted by the latter on an array of matters, helped to create a climate of discontent, suspicion, and unease among the citizenry, prompted a series of complaints to various domestic and international agencies.

The EOM/OAS regarded it to be essential to familiarize itself with these circumstances, not just from reports produced by international missions, but also and in particular, from political and civil society organizations in Peru itself. Following is a general assessment of the more relevant issues and circumstances that might help to understand the climate in which the elections were held.

2.1. The candidacy of the President

Article 112 of the 1993 Constitution allows consecutive reelection for one additional term of the incumbent President of the Republic.

Alberto Fujimori was elected President in 1990 and reelected in 1995. In view of the elections programmed for 2000, there was soon speculation as to whether or not Mr. Fujimori might try to stand for another term, bearing in mind that the 1993 Constitution did not contain any transitory clause stipulating that the presidential term that began in 1990 should not be regarded as the first, inasmuch as it came under a previous Constitution.

In that context, the enactment of a number of laws and the amendments to the election laws were instrumental in permitting the candidacy of the President. In 1996 Law No. 26.657, termed the Authentic Interpretation Law (or reelection law) was enacted, sparking a debate, with its opposers arguing that the promulgation of the aforesaid law constituted a *de facto* modification of Article 112 of the Constitution. When the matter was submitted to the Constitutional Tribunal for a ruling, the latter found that law to be inapplicable in the case of the President. It should be mentioned that those members who voted in favor of that ruling were discharged from the Constitutional Tribunal a short time later.

Furthermore, Organic Law No. 26859 of 1997 (Elections Law) was amended, excluding the condition of being the incumbent President as grounds for disqualification of a candidate. The Organic Law of the National Elections Panel was also modified, making it a requirement to have a qualified majority vote in favor of four of its five members for the disqualification of a candidate to be accepted. It should also be born in mind that the rules governing the composition of the National Elections Panel and the Special Electoral Panels were also amended.

In sum, the opposition parties denounced the different mechanisms used by the governing majority in the legislature and the alleged controls and influences exerted by the Executive over the other branches of government to retain political and institutional control of the State. According to the opposition, the continual manipulation of the legal system as an instrument to ensure the control of power by the incumbent governing majority was eroding the foundations of the public's faith in and support for an open and pluralistic system whereby rival political groups compete in periodic elections.

In light of this situation, the opposition political groupings attempted, in 1996, to submit the matter to the populace so that it might express its opinion in a referendum, citing Articles 31 and 32 of the Constitution, the pertinent portions of which state: "The citizenry shall have the right to participate in government via referendum, proposed laws..(...)" (Article 31), clarifying that "The following matters may be submitted to referendum: 1. Total or partial reform of the Constitution; 2. Adoption of provisions with the rank of law; (...)" (Article 32).

In that connection, Congress passed Laws 26.592 and 26.670, which set forth the procedures that require the participation of Congress in the process for calling any referendum. Once the Democratic Forum [*Foro Democrático*], the organization spearheading the pro-referendum campaign, submitted more than 1.4 million signatures, the National Elections Panel, acting in accordance to law, referred that petition to the Congress, where it was lodged in August 1997. It should be mentioned that the modifications made to Law No. 26.300 established that for any referendum to be held it was required that a bill first be rejected by Congress, with the added proviso that said bill received the vote in favor of at least two fifths of the members of Congress. In this way the governing majority in the legislature blocked the bill and the referendum bid was derailed.

2.2. Situation of the Judiciary and the Attorney General's Office

In accordance with legal provisions, the government created Executive Commissions that appointed "provisional" judges, who could be promoted without need for a public competition based on merits or, conversely, be remove without cause. This lack of stability spread fear among Judiciary officials that they might be dismissed in reprisal for rulings that did not sit well with the authorities.

As a result of the foregoing, the appointment was postponed of titular members of the National Council of Magistrates. This has meant that this situation of "provisionality" has been allowed to continue indefinitely. It was in this framework that judicial complaints brought against alleged arbitrary acts of the State were neutralized, and there were public accusations that private interests had been served that identified with the designs of the incumbent administration.

Furthermore, as was mentioned, the removal of three members of the Constitutional Tribunal, which is required by its Organic Law to have seven (7) members in order to function and exercise control over constitutional matters, deactivated that Tribunal and constituted a clear case of infringement of jurisdiction.

2.3. Use of public funds and State assets for electoral purposes

The Constitution of Peru provides the right of all citizens to participate in government under conditions of equality in election processes. By the same token, the Elections Law expressly prohibits the use of public funds and State assets for electoral purposes. There were a large number of complaints alleging violation of these provisions. The Ombudsman's Office stated for the record in many of its statements that the use of State funds for electoral purposes violated the principles of fair elections and the necessary neutrality that State institutions are required to maintain. (Annex 14)

Although it is expressly required under the rules in force, it is not always easy to draw a dividing line between public office and an election process when the person in the former position has an acknowledged interest in the latter. In fact, there is a duality, a virtual overlapping even, between the positions of public official and of candidate, where the former position can offer an added advantage over other aspirants.

On several occasions, the Ombudsman's Office, acting, either *sua sponte*, or in response to actual complaints, pointed out situations and cases where government officials used State assets or funds for electoral purposes. A full report was made public in that regard after the first round of elections. Political groupings also denounced coincidences between measures implemented by the National Government and the electoral aspirations of the President-candidate.

In Peru, the Executive Branch has consolidated functions that give it direct influence at the local level. The Executive also carries out a large number of welfare programs, which were interpreted at the time of their implementation as campaign propaganda. In the same fashion, the Executive persistently took advantage of the inauguration of public works for propaganda purposes and used the capacity provided by its control of much of the national budget to favor those local governments or areas that threw their lot in with candidates of the governing party. The government programs that drew the largest number of complaints were the National Food Assistance Program (PRONAA) and the Family Housing Lot Program (PROFAM).

The food programs are channeled through grassroots organizations, which serve to mobilize a considerable amount of resources. As highlighted by reports of the Ministry for the Advancement of Women and Human Development, more than 1.5 million people have benefited from such State measures. PROFAM was touted as a program that the national government was launching to solve the housing problems of over 700,000 adults.

2.4. Anomalies in the electoral agencies. The case of the forged signatures

As mentioned above, under the 1993 Constitution, three organizations are in charge of the elections process: the National Elections Panel, the National Registry of Identification and Marital Status (RENIEC), and the National Elections Procedures Office (ONPE).

The appointment of their officers was not regarded by the political groupings of the opposition as a guarantee of their efficiency and impartiality. The changes in the criteria and methodologies for appointing the authorities of these agencies enabled the designation of persons who the opposition political groups and other civil society organizations in Peru alleged to be loyal to the election interests of the governing party.

Thus, for instance, the modifications to the Organic Law of the Judiciary meant that the justice elected by the Supreme Court as member and President of the National Elections Panel could be a serving -and no longer necessarily a retired- magistrate. Accordingly, a magistrate close to the interests of the current administration could be appointed.

The lack of confidence that existed from the outset as a result of the composition of these organs was shaken even further when in early March the public scandal broke of the alleged forgery of over a million signatures for registering “*Perú 2000*,” a political movement that formed an alliance to support the reelection of President Fujimori with three other groupings: “*Cambio 90*,” “*Nueva Mayoría*,” and “*Vamos Vecino*.”

Allegedly implicated in the facts, which are still under investigation by the Attorney General after being uncovered by the Ombudsman’s Office and the Lima-based newspaper “*El Comercio*,” is the Head of the National Elections Procedures Office of the city of Arequipa, which casts suspicion on the senior agency in charge of organizing and ensuring the transparency of the election process underway.

The EOM/OAS immediately stressed the importance of swift clarification of this complaint (in its very first bulletin of March 10) because it regarded it as a symbolic case. Although the matter was taken up by the Attorney General’s Office, as Peruvian law requires, subject matter jurisdiction remained. Unfortunately, in the opinion of this EOM, neither the Attorney General’s Office, nor the National Elections Panel, nor the ONPE gave clear and concrete signs of a desire to clarify the matter before the date of the polls in either the first or the second round of elections.

2.5. Involvement of the Armed Forces in the electoral process

The opposition groups said that in their opinion there was a strategic alliance between the high command of the Armed Forces and the current administration that has existed since the measures adopted in April 1992. They base this assertion, *inter alia*, on the fact that the Executive Branch has the authority to appoint and remove all the commanding generals without any intervention whatever on the part of Congress.

They further claim that the logistical capability of the Armed Forces has been used by the Government to serve its own interests. By way of an example, they mention the involvement of the Armed Forces in the distribution of election propaganda material for the governing party’s political alliance.

Prior to the arrival of the EOM/OAS there were also complaints of the presence of election propaganda on military facilities.

2.6. Lack of equitable access to the mass media

In all election processes the rival factions must have equal access to the mass media so that the public can inform itself fully about candidates' plans and positions, in order to be able freely to elect those that best satisfy their preferences. Accordingly, the mass media are expected to behave in a pluralistic, open, and equitable manner, both in their regular news programs and in granting commercial slots, in order to encourage a free exchange of ideas and broaden public knowledge.

The opposition political groupings did not have regular access to the media, nor were they treated impartially by the media, in particular the public television networks.

There have been complaints of coercion of the mass media through demands imposed by the Tax Authority (SUNAT) and other government agencies to which companies are financially indebted. The State is the main creditor of the commercial public television networks and one of their top advertising clients.

State advertising was allegedly used to disseminate official information in order to help the election campaign. Moreover, the opposition argues, advertising used in this way helps to raise awareness among the electorate of the party that promotes it.

IV. First Round of Elections

1. Pre-election period

In the run up to election day on April 9, 2000, the EOM sensed a prevailing climate of mistrust among both political organizations and other institutions, that went well beyond the three agencies directly in charge of the elections and encompassed the majority of state institutions. Various concerns were expressed and complaints made not only by the political groups taking part in the elections, but also by other observer missions and various private civil society organizations.

The core concerns in this election process in Peru, given the underlying worries regarding the actual independence of the powers of the State, were the use of State funds in the election campaign, and the lack of equitable access on the part of opposition candidates to the mass media, in particular the public television networks. With regard to electoral matters, the main topics of concern were training for polling station officials, voter information, election management, and the vote-tallying system for processing the poll. Of particular importance for the EOM/OAS was the criminal and administrative inquiry into the alleged forgery of signatures for registering the political movement, "*Frente Nacional Independiente Perú 2000*," since, as mentioned, the affair not only undermined the credibility of the ONPE, the body responsible for the holding of the elections, but also raised questions about the fairness and transparency of the entire election system.

The authorities of the EOM in Peru met with representatives of the electoral agencies on several occasions in order to address these concerns.

The events connected with the alleged forgery of signatures for registration of *Frente Nacional Independiente Perú 2000*, in which the head of the ONPE of the City of Arequipa was implicated, resulting in the official's immediate removal from office, were what most seriously damaged the credibility of the election process. For that reason, EOM felt compelled to request the Government of Peru, and most particularly the National Elections Panel, to give convincing signals to help restore confidence in the process.

The insistence of the EOM on the rapid clarification of this incident stemmed from no impulse or desire to interfere, nor was it provoked by the mood in political and journalistic circles (which was rapidly heating), as one editorial opinion would have it believed. The case was crucially important to the credibility of the entire process:

- For the incident to have occurred as described in the complaint (regardless of whether the investigations later found the complaint to be unfounded) would have required the involvement of senior ONPE officials on at least two occasions:
 1. In the theft of information from the ONPE's electronic, magnetic or printed records containing the lists of signatures from the previous registration and polling process, on which the list of allegedly forged signatures is presumed to have been based; and
 2. During verification of the signatures for registering the grouping someone inside the ONPE would have had to "enable" approval of the signatures as current if the

tallying system rejected them on checking their authenticity; or, alternatively, by simply omitting to perform a check.

- The National Elections Panel referred the case to the Attorney General's Office in accordance to law. However, before the Attorney General's Office had even launched an inquiry as part of the investigation process, the National Elections Panel suddenly issued a ruling disqualifying both the organization and its candidates and revalidating the alliance of the remaining political groupings that supported President Fujimori's candidacy.
- Despite the fact that responsibility for the criminal investigation lay with the Attorney General's Office, subject matter jurisdiction remained and, in the opinion of the EOM, the National Elections Panel should have undertaken an investigation as *primus inter pares* organ of the three electoral institutions. It never did so.
- At the insistence of the EOM, the most that was ever accomplished was a request to the ONPE to investigate itself.
- Subsequently, the National Elections Panel appointed a special investigator. However, it was too late for him to make sufficient progress to help repair the damage that the complaint had caused to the credibility of the process.
- The Attorney General's Office lost no time demonstrating its diligence by seizing all the documentary and magnetic information that the ONPE had, and preventing access to that information over the weeks that followed. However, it displayed considerable sluggishness in opening its inquiries. By the time of the first round of voting, none of those allegedly responsible had been called to testify.

Despite the insistence of the EOM regarding the urgency of obtaining results in this investigation, in order to give the public clear signs of progress in clarification of the facts, no significant headway was made.

At the same time, the EOM recommended the National Elections Panel to coordinate the necessary measures with the National Elections Procedures Office (the ONPE) in order immediately to set about implementing plans to provide electoral information to voters and training to polling station officials that focused particularly on the mechanics of polling and casting the preferential vote, and on stressing the fact that the ballot is secret, since it was noted that the public was widely misinformed in that respect.

The Mission found that the elections simulation, which the laws requires to be held eight days prior to election day and which was held on Sunday, April 2, was not, strictly speaking, a simulation but, rather, a training exercise in which many of the participants were seeing the election materials for the first time. Despite the fact that the instructors and the workshops which the EOM had the opportunity to observe were proceeding well, they were patently a training effort and not a simulation. It was noted that polling station officials continued to have doubts about possible scenarios that might occur at the polling stations, particularly with respect to nullity of ballots and the counting preferential votes.

On the question of formal aspects, the EOM, with its team of computer and legal experts held meetings with the Head and officials of the ONPE, in order to determine whether or not the necessary guarantees were in place for holding the election, by attempting to examine closely procedures, applications, and handling of queries put by other national and international observer groups.

The EOM noted the willingness of the electoral organs to comply with the recommendations made by the Mission at successive meetings. However, in practice that willingness was not translated into concrete action on the above-mentioned fundamental issues that are the responsibility of the ONPE (training, election management and the vote-tallying system).

As to the vote-tallying system used in the polls, the ONPE had lodged a request to include an audit of the tallying software designed by that office as part of the activities of the electoral observation mission formally requested by the Permanent Representative of Peru to the OAS, Ambassador Beatriz M. Ramacciotti, in a note dated February 4, 2000, in Washington, D.C. Furthermore, after the EOM was installed in Lima, in March, almost immediately various concerns were brought to its attention by a number of political groups regarding the possible risk of "electronic vote rigging," along with a request that the EOM undertake some sort of verification in that respect.

It was impossible immediately to carry out a real "audit" (including an analysis of the source code of the software by top programmers experienced in such services) because there were not sufficient resources available to tackle such a demanding task.

In addition, initial consultations with the ONPE regarding this task brought to the surface a number of differences of opinion over what constituted a "functional analysis" of the vote-tallying system, what we might initially aspire to given the limited resources of the EOM, and what was meant by real audit in the sense mentioned above.

Furthermore, in order to carry out a real computer audit it was essential to have the finished software. What the EOM found was that the ONPE, as is explained below, was making constant modifications to the software to be used.

Accordingly, without ruling out the possibility of an audit and on the basis that a functional analysis would at all events be an integral part of a future audit and would be an indispensable step toward completing such an audit, the EOM asked for the ONPE's cooperation for beginning a technical analysis of the software, in conjunction with the technical representatives of all the political parties taking part in the election process.

It is important for the EOM to set down in this report the basic reasoning that it used in its dealings, both with the ONPE and with the political groupings that distrusted the electoral institutions: the aim was to find, in connection with those issues on which the main concerns centered, distinctive elements that would restore the confidence of the electorate. In the case of the vote-tallying system, the prime objective was to show, through joint testing of the software with representatives of the political parties, that there was nothing to hide.

To that end, a replica of the ONPE vote-tallying system was installed at the offices of the EOM, in order, in conjunction with technical representatives of the parties, to observe it in operation. This exercise was repeated as many times as the technical advisers of the EOM and the political

groups deemed it necessary, and periodic reports were issued on the progress and shortcomings observed during the process. The EOM also suggested to the ONPE that it give out and disseminate a simple description of the architecture and a flow diagram of the vote-tallying process that any member of the public might understand. Although we were informed that this would be done, it never was.

The Mission also received many complaints concerning the use of State funds in the President's reelection campaign, which included not only the use of material and logistical resources, but also the use of intimidation tactics, such as threatening to cut state benefits (free food), or spreading false concerns and fears about the inviolability of the secret ballot. As a result of deploying its observers in different regions of Peru (Lima, Arequipa, Cusco, Cajamarca, Trujillo, Huancayo, Huaráz, Iquitos, Piura, Ayacucho, Chiclayo, Puno and Huánuco) the EOM was able to confirm the use of public resources and the participation of public officials and civil servants in campaign activities. Moreover, this was documented in the report of the Ombudsman's Office.

In this connection the EOM received a promise from the President that he would cease to inaugurate public works for the remainder of the election campaign, and that stiff administrative punishments would be meted out to any public officials caught using public funds for election purposes. The EOM monitored this particularly closely. In fact, the President did stop inaugurating public works, but he was adamant about not relinquishing his on-site supervision activities throughout the country, since they represented a key element of his administration.

The EOM also focused special attention on equal access to the mass media for all political groupings, along with the possibility of free exercise of the right to be informed thereby, on the understanding that those elements are fundamental to the transparency of the election process.

In following up complaints, a task to which the EOM had committed itself, the Mission found that, with three weeks to go before the elections, measures had still not been adopted to enable equitable access to the mass media for all political groupings, a crucial element for ensuring that the voting public had access to in-depth information from a diversity of sources. In this regard, the EOM was particularly concerned by the events that overtook *El Comercio* newspaper, since they constituted a step backward in an area where there was an urgent need for forward progress that might ensure a public and pluralistic debate involving all the candidates. On that occasion the EOM also backed the application presented by the Inter-American Commission on Human Rights for precautionary measures on behalf of Mr. Genaro Delgado Parker in order to restore to him control of the *Red Global* television network and to replace the necessary equipment to enable *Radio 1160* immediately to resume its broadcasts. In spite of the fact that adoption of such measures did not constitute a prejudgment on the merits of the case, they never materialized.

With fifteen days to go before the elections the progress made in solving the shortcomings that had been observed in the process was not sufficient to dispel public concerns with respect to the conditions in which the pre-election stage was developing. In addition the steps taken to provide equitable and unfettered access to the mass media remained inadequate. In spite of the foregoing, the EOM regarded as positive the debate held on March 22 between three of the presidential candidates. The debate was organized by the *Universidad Peruana de Ciencias Aplicadas* and covered by some of the main media networks.

Pursuing this line of effort, the EOM sought the cooperation both of mass media executives and of the government in committing to a joint effort to help immediately to remedy the above situation. In that regard it is important to recognize the lengths went to by the President of the Cabinet, Alberto Bustamante, to facilitate not only exchanges between the EOM and mass media executives, but also an agreement whereby each candidate would be granted time on each television station to present their campaign message.

On March 27 the EOM was informed by the National Elections Panel that it would appoint highly experienced computer experts from reputable private agencies to be present at the ONPE in order to act as technical guarantors of the process. That same day a number of television stations agreed to broaden access to all political parties and undertook to broadcast an information slot in which all candidates would have the opportunity to present their government plans in an equal and equitable manner. The Mission also learned that on that same day the Cabinet would issue a resolution prohibiting advertising of government social programs throughout that week.

The EOM also monitored compliance with the guarantees that the Government had undertaken to provide during the week prior to the elections so that the candidates might conclude their campaigns in a climate in which voters could be assured of their participation.

Conclusions on the pre-election period

Generally speaking, the EOM can affirm that, in carrying out its mandate, it followed up its findings by continuously making suggestions and proposing steps to improve some of the fundamental aspects of the electoral process where there were shortcomings, problems, or irregularities, so that the Peruvian people could decide their destiny freely through the elections of April 9. To that end, during the pre-election period, the EOM underscored the flaws in the system in its bulletins.

Despite these persistent problems and irregularities, the EOM/OAS acted cautiously at all times to help preserve the viability of the vote, which was so earnestly desired by the citizens and by the candidates and their political supporters. As far as possible, it also avoided issuing any prejudgment of the elections, while it waited for the remaining stages to be completed, including, for instance, the actual voting itself and the subsequent procedure for the ballot recount and announcement of the official returns. The Mission stressed issues where it considered it indispensable to send out clear and convincing signals to restore public confidence and establish a minimum degree of credibility for the elections by the time the pre-election period concluded.

At the close of this period the EOM felt compelled to inform the Peruvian public that the conditions that the Mission had observed in the election process did not assure a fair and equitable contest and that they were plagued with repeated inadequacies, irregularities, inconsistencies, and inequities that prevented the citizenry from enjoying the conditions for holding a proper election in accordance with the fundamental principles and practices that ensure the effective exercise of democracy. The foregoing is based above all on the fact that the agencies in charge of the election process, and other players in the election race, should have refused to assume fully their responsibility to prevent the Peruvian people from going to the polls with a sense of fatalism and a general perception that whatever the outcome it would be fraudulent.

The above announcement stemmed from the fact that the guarantees that the EOM sought to elicit from the Peruvian electoral institutions were ignored and dismissed by them as unimportant. The EOM also stressed that if the tableau of irregularities that compromised the pre-election period were to be repeated and verified during the elections, thereby impairing the free exercise of the people's will and the transparency of the official tally, the EOM/OAS would duly report as much to the member states of the Organization, so that, in turn, they might proceed, within the OAS, to hold consultations and to pursue courses of action that the inter-American system authorizes in order to preserve the democratic order of its member states.

Despite the foregoing, the EOM was fully aware from the beginning of its activities that only the National Elections Panel is legally empowered to annul all or part of an election process and for that reason it confined its activities to actions or procedures to monitor closely each stage of the election process. Its main objective was to ascertain that the process complied with certain rules and standards of legitimacy and transparency. Consistent with its mandate, the EOM was ever mindful that its activities must not attempt to substitute any of the players in the electoral process and that the only body with authority to assess the legality of that process is the National Elections Panel.

Final responsibility for the conduct of the electoral process rests with the institutions, and the political groupings in contention.

2. Election day

It should be born in mind that the poll was held in a large, geographically and culturally diverse country, with more than 87,000 polling stations situated at 3,770 polling centers distributed across 47 electoral districts, and with an electorate in excess of 14 million people. Each electoral district had a Decentralized Elections Procedures Office (ODPE) and a vote-tallying center, whose coordinator took his orders from the Head of the ODPE in each district. They were in charge of ensuring that election materials reached the polling centers in time for the elections and of organizing the collection of ballot returns after the voting concluded.

The EOM/OAS, for its part, had planned to carry out a quick count, the results of which would not be made public, but would serve as an instrument to verify and monitor the results of the poll.

The EOM observers deployed across the country (Annex 9) began their work by stationing themselves at pre-selected "primary" polling stations, in order to conduct surveys for the EOM's quick count. The idea, if possible, was to move on next to a pre-selected "secondary" polling station, and thereafter to other voting centers in the vicinity, before finally returning to the designated "primary" polling station as the polls closed, in order to monitor vote counting and preparation of ballot returns.

In this way, the EOM managed to observe firsthand approximately 800 polling stations throughout the country.

It should be underscored that all *in-situ* observations reported cases of tardy installation, with delays of as much as one to two hours at some polling stations before they became operational and voters were able to cast their ballots.

The reasons given for the foregoing varied. On more than one occasion it was claimed that the ODPEs failed to distribute election materials, which is something that the EOM did in fact confirm. What made this surprising, however, was that generally speaking the materials were already on the premises, and, in fact, had been so since the previous day. In other words the delay in these cases occurred because coordinators were somewhat overly ritualistic in handing out materials, with the ODPE coordinator insisted on delivering ballot boxes himself, even at polling centers with numerous polling stations. The above also happened because the ODPE coordinators would only deliver the ballot box once the polling station was properly installed; in other words, they transferred the blame to the polling station officials. Added to this was the fact that the members of the Armed Forces and the police, whose duty it was to maintain security, in not allowing voters on to premises until all polling stations were installed, increased the mounting delays since, paradoxically, that made it impossible to staff polling stations with voters, as provided by Article 250 of the Electoral Law. Another reason was that it took between a half-hour and an hour on average to ensure that the materials were in order, affix papers, and fill out certificates.

The EOM noted large numbers of representatives of the various political parties deployed at most of the polling stations observed. In other cases, groupings that admitted to organizational problems in this respect fielded accredited general representatives to carry out monitoring functions throughout a polling center. This caused problems at some centers, due to lack of uniform criteria. At some centers it was not permitted to accredit representatives at more than one polling station. At others, where representatives were assigned to the whole center, it was not clear if they were authorized to receive certificates from each polling station. This was something that repeated itself at the vote-tallying centers when a representative sought to obtain ballot returns for the polling stations there. Advance warning of this problem was given before the elections, when it was mentioned that the system for accreditation of representatives was complex and that it was not practical for the accredited representative at the national level to have sole authority to appoint polling station representatives. This was compounded by the failure to clarify the issue over whether it was necessary for each accredited representative to be approved also by the ODPEs.

On election day it was found that accredited representatives failed to appear for duty at individual polling stations and were replaced by others, which resulted in the changes to the previous list of designated representatives. Upon learning of this, some ODPE coordinators refused to allow the representatives to take up duties at polling stations.

There was a large turnout of observers from the national observation group, *Transparencia*, and, though in fewer numbers, from the Ombudsman's Office.

The observers deployed throughout the country agreed that the armed forces and police maintained order and security at voting places. That said, in some cases they were regarded as helpful in speeding up the process, while in others their intervention was considered ill-advised, since, on one hand their interference caused long lines of voters to build up outside polling centers for hours, with the upshot that there were voters who arrived as the polls closed and were refused entry, as occurred in the Department of Junín. Furthermore, by requiring voters to show identification in order to enter

voting centers, and, moreover, of requiring that representatives and observers be searched, constituted overzealous performance of duty, which is in breach of the provisions contained in the Electoral Law (Art. 40 of Law 26.859) and runs contrary to a regime that provides for freedom to vote (Art. 7 of Law 26.859) as a prerequisite of its political and institutional identity (Arts. 31 and 176 of the Constitution).

There was a massive voter turnout, which started early, and voting proceeded throughout the day in a calm and orderly fashion.

Although party political propaganda remained visible on the walls surrounding the various polling centers, that was not the case inside them.

3. Close of the poll and vote counting

Not all polling stations closed at the scheduled time of 4:00 p.m. There were even variations within polling centers, with some polling stations closing as late as 8:30 p.m.

All observers attended the vote counting process, which proceeded unhindered and without interruptions. The various groupings in contention fielded an effective presence of representatives. *Transparencia* representatives distributed themselves at different polling stations but, as they told the EOM, each representative had to collect six returns, so none remained continuously at any given polling station.

In many cases there was a visible lack of training, with officials having first to consult the manual or instructions *in situ* before they could perform the tallies or fill out the ballot returns.

The procedure seemed awkward and the respective rules were not interpreted uniformly; in some cases votes were counted without the ballot paper being cut in half to separate the presidential and congressional votes. Also officials were not always sure how to count preferential votes. There were several cases where polling station officials found that the figures entered in the statement of installation did not match the number of voters and, in many cases, according to the observers, station officials had difficulty overcoming this problem.

No major complications were reported in connection with the closing of ballot boxes. Polling station officials displayed responsibility in ensuring the confidentiality of the results entered in the ballot returns. It is worth recalling that, according to the laws of Peru, ballot papers are physically destroyed at each polling station, once the count is completed and the respective ballot return is prepared, and that, under the agreed procedure, 15 original returns (one for each political party) had to be prepared. In most cases this delayed considerably the closing of polling stations and held up the subsequent process of shipping ballot returns to vote-tallying centers.

In the event the count proceeded without incident, with few votes annulled or ballot returns challenged.

The shipment of ballot returns to the vote-tallying centers was extremely slow. There were long waits at the vote-tallying, which ODPE coordinators said were caused by transportation problems or by polling center authorities who ordered vehicles to stand by until all the polling stations had finished, before sending the election returns to the vote-tallying centers. Another reason mentioned to the EOM was that some polling station officials would not hand over their ballot boxes until they were paid their fee. In Ayacucho the intervention was needed of the representative of the Ombudsman's Office to solve this impasse. In Ayacucho too it was stressed that the delays were also due to the long distances and the bad roads between the department seat and the various electoral districts. This situation was repeated at many department seats, where officials reported that election materials did not arrive until the following afternoon. This is precisely what happened in the Department of Loreto for instance.

There were certain problems regarding the receipt of ballot returns, including incidents such as returns that arrived damaged, stained or not in the requisite envelopes. The above was backed up the report from the Lima headquarters: As of April 12, three days after the polls, at the various vote-tallying centers set up in Lima there were incidents involving ballot returns that were lost, damaged, and stained with ink. Accordingly, the corresponding ballot returns were requested for processing from the Special Elections Panel, or, as appropriate, from the Armed Forces.

Broadly speaking, this stage of the election process revealed a number of organizational inadequacies, given that there lacked a system for rapid and effective identification of the number of polling stations or for keeping track of the polling centers, districts and provinces where those stations were situated. In addition, adequate information was not provided regarding the retrieval status of ballot returns and a number of setbacks were caused by a lack of coordination with the security forces over their shipment, which helped to heighten the general atmosphere of mistrust that was already overshadowing the electoral agencies.

4. Vote-tallying System

4.1. Background

On March 8, 2000 the Electoral Observation Mission (EOM) of the Organization of American States (OAS) initiated its technical mission in support of the electoral process in Peru. The main objective of the technical mission was to conduct an analysis of electoral processes and to determine their reliability by identifying shortcomings and problems, and recommending corrective measures. This analysis included a broad evaluation of the vote-tallying software.

As mentioned, the EOM had received a request from the ONPE to carry out a computer system audit. Several political groupings also mentioned the risk of "electronic vote rigging." Accordingly, the Mission sought to come up with a work procedure that would enable the software to be analyzed with the participation of technical experts representing the political parties, in order to quell any doubts. With these objectives in mind, the Mission began to review the documentation on the vote-tallying system furnished by the National Elections Procedures Office (ONPE). That information included the system documents and a CD ROM containing the source programs and their respective setup programs.

Initially this project was to be confined to an evaluation of the ballot counting software. However, in light of the concerns of the political parties and the questionable status of the procedures available, the EOM deemed it advisable to broaden the initial objective to include an analysis of the processes, procedures and support technologies used in the elections held on April 9, 2000. This change of scope made it necessary to develop a much more ambitious work plan than was initially intended. The new plan was presented to the technical representatives of the various political camps and to Mr. Jaime Brossard, Computer Systems Manager of the ONPE. This plan provided the basis for the technical evaluation of the ONPE processes.

The final scope of the technical mission covered two main areas:

- Analysis of electoral processes
- Evaluation of the vote-tallying system

4.1.1. Analysis of Electoral Processes:

Objectives: the main objectives were

- To analyze the processes, identify areas where there was potential for fraud, and recommend corrective measures.
To determine whether the data and electoral documents fed through the system's processes and sub-processes were consistent, exact, and secure.
To ascertain the existence and availability of clear and documented procedures for each of the processes and sub-processes identified.
- To corroborate and ensure a continuous flow of information and documents between the National Elections Procedures Office and technical representatives of the political groupings and parties.
- **Scope:** This task encompassed an analysis of the functions, procedures and operations that the electoral process supported by the ONPE entailed.
- **Methodology:** the methodology applied included
 - Compilation of functions and processes.
 - Preparation of checklists for identifying their availability.
 - Carrying out checks.
 - Production of evaluation reports.

4.1.2. Evaluation of the Vote-tallying Software

- **Objectives:** To evaluate the components of the vote-tallying software, using test cases to determine its acceptability and reliability. This entailed verifying that the functionality of the vote-counting system was consistent with the required functions and results (or "transactions", as they are commonly termed in such analyses) established for this software. The tests to be applied had to verify that the transaction requirements and established transaction needs were the ones that the system implemented.

- **Scope:** Evaluation of the software to test user acceptance of the system, in order to certify that that it met the requirements set forth in the electoral regulations. This did not include detailed tests to check system routines or component integration.
- **Methodology:** the methodology applied included
 - Understanding the transaction and technical requirements of the vote-tallying system.
 - Conducting work meetings with the technical representatives of the political parties, and the ONPE management and technical personnel.
 - Installation and configuration of “Vote-tallying Center” at the EOM headquarters to carry out functionality tests.
 - Design of test cases simulating real ballot returns (these test cases had to verify the functionality of the system as regards input, processing and distribution of vote-counting data).
 - Implementation of test cases at test sessions conducted at the EOM and in simulations carried out by the ONPE.
 - Documentation of results.
 - Certification that the recommended changes and corrections had been implemented.
 - Final documentation on the tests, indicating whether or not the system satisfied the established criteria for determining if the system was reliable and secure.

4.2. First Round

The observation and computer system support plan devised by the technical experts of the EOM, started on March 8, 2000 with the review of the documentation on vote-tallying system delivered by the ONPE.

To carry out this review the technical team developed a plan of action that included a series of activities, which are set out below. Annex 12 describes the details of this plan and progress made. The implemented plan included:

- **Meeting with ONPE executives and technical personnel.** On March 8, a meeting was held at the headquarters of the ONPE. The meeting was attended by the ONPE representatives, José Portillo Campbell, Head of the National Elections Procedures Office; José Cavassa R., Manager of Election Management; Godofredo Dávila Orihuela, Manager of the Legal Advice Office; Jaime Brossard, Manager of Computer Systems; and by representatives of the EOM/OAS, led by Eduardo Stein, Chief of the Mission; Diego Paz, Deputy Chief of the Mission; and J. Walter Vera, in charge of technical and computer systems support. At the meeting an agreement was reached with Mr. Brossard to invite the technical representatives of all the political parties and groupings to a work meeting to see a detailed presentation, of the kind given to the EOM/OAS, of the architecture, processes and tools to be used in the vote-counting process.
- **Procurement of required equipment and installation of the vote-tallying software.** In response to concerns raised by the candidates of political groupings, such as *Acción Popular* and *Unión por el Perú*, regarding the risk of so-called “electronic vote rigging”, the EOM requested the cooperation of the ONPE in initiating the technical analysis of the vote-tallying software, in conjunction with the technical representatives of all the rival political factions in the elections.

To that end, the first meeting coordinated by the EOM was held on April 6 with a view to installing at its offices a replica of the vote-tallying system developed by the ONPE, in order, in conjunction with the technical representatives of the political groupings, to observe it in operation. This exercise would be repeated as many times as the technical advisers of the EOM and the political groups deemed it necessary, and periodic reports would be issued on the progress and shortcomings that emerged during the process.

The equipment needed to analyze and evaluate the software provided by the ONPE (a server and work stations) was procured and installed at the offices of the EOM. A local area network was installed with minimal external connectivity, which replicated the standard configuration at the vote-tallying centers of the ODPEs. The equipment installed at the EOM was used in joint work sessions with the technical representatives of the political parties.

- **Analysis of Election Processes and Existing Procedures.** The processes and procedures that were to be used in the forthcoming elections were the first items to be studied and analyzed. This analysis, carried out in conjunction with the technical representatives, found positive aspects as well as raising a series of concerns that prompted requests for information and explanations of certain processes and flows. All such requests were formally addressed to the ONPE. The EOM followed up on the requests and arranged frequent meetings at which attempts were made to reach a compromise between both parties.
- **Work meetings attended by the technical experts of the political parties, the ONPE, and the EOM/OAS.** At the start of the Mission it became obvious that there were no clear mechanisms enabling the political groupings to voice their misgivings about the procedures used by the ONPE.

In addition to this, there lacked fluid communication and document-sharing that might help to understand and clarify the election processes and sub-processes. This enabled a climate of distrust to descend that was not conducive to holding a clear and transparent election process.

In order to improve these conditions, a schedule of work meetings was drawn up. These meetings were held at the offices of the EOM/OAS and attended by the technical representatives of the political parties, ONPE technical personnel in charge of vote tallying, and computer experts of the EOM/OAS. The main objectives of these meetings were to establish lines of communication among the participants; prepare the necessary work plan for testing the vote-tallying software; and share information and documents. At the first meeting an agreement was reached on a detailed agenda, issues to be discussed (including concerns), and activities to be carried out during the period that the system tests lasted.

- **System tests conducted with the participation of the technical experts of the political parties.** A week before the elections the ONPE furnished the EOM with different versions of the software, which created an objective problem for the analysis. This problem was compounded by the absence of detailed instructions on correct installation of the software. On Thursday, April 6, the ONPE delivered to the EOM a wax-sealed envelope supposedly containing the definitive version of the software for verification and comparison against the version that would be used on the day of the elections.

The system was eventually successfully installed (with technical support from the ONPE) but due to a clash with the simulation schedules, the EOM was only able to conduct minimal tests that were confined to functional aspects.

The EOM requested one final simulation to be conducted on the Saturday, 24 hours before the polls opened. The results were discouraging, inasmuch as a large number of functional flaws were detected.

These system flaws were confirmed during the simulations carried out hours before vote tallying started. Annex 12 (Simulations of the vote-tallying system) contains detailed explanations of the problems found.

- **Observation of the elections, documentation of results, and preparation of the report.** On April 9, the day of the general elections, irregularities were detected at every stage of the election process, which affected and raised direct questions about the transparency and clarity of the process. The main problems had to do with:
 - Completion of ballot returns by polling station officials. The average time taken by polling station officials to complete the ballot returns was three to five hours. This was basically due to the laborious process of counting preferential votes using the work sheets included in the electoral roll, as well as to actual completion of ballot returns. In many cases, returns only began to be shipped from polling centers at 10 p.m. Equally preoccupying were incidents involving party representatives and completion of returns, where polling station officials and representatives of political parties all signed off on returns before those documents had been completed in full.
 - Shipment of returns from polling centers to vote-tallying centers. The returns were supposed to be shipped inside the ballot boxes together with all surplus election materials from the polling stations. However, for reasons of space and in order to ship as many returns as possible in the vehicles, they were removed from the ballot boxes, which resulted in some of them becoming damaged.
 - Owing to the considerable delays in the closure of polling stations and preparation of ballot returns, in many places the vehicles provided for transportation withdrew. Ballot boxes were crammed into taxis for shipment. The size of the cars meant that few ballot boxes were transported in this way. In many cases private vehicles belonging to party representatives and the ONPE officials were drafted into use.
 - Receipt of ballot returns at vote-tallying centers. At some vote-tallying centers the receipt of ballot returns created bottlenecks because each return was examined and a record made by hand of the returns received, their condition, and other observations.
 - Digitization of returns. Personnel at the vote-tallying centers had planned to synchronize the system at 2 p.m. The digitizers were in place by 3 p.m. but due to the above-mentioned problems by around 10 p.m. the majority of vote-tallying centers had only digitized four percent of returns. The returns started to arrive from that point forward,

but only at widely spaced intervals, with the upshot that large numbers of personnel in charge of digitization had nothing to do.

- At most vote-tallying centers, only a single group of digitizers was hired and no thought was given to having digitizers working in shifts (in spite of this having been emphatically recommended by the EOM following the simulation of the previous week). When the single group of digitizers grew tired the tallying center was closed, which caused a delay in delivering the results. However, it also fueled public suspicions because on the day after the polls, Monday, April 10, several vote-tallying centers in Lima and other cities remained closed until midday. The argument used to justify this was that the budget was inadequate.
- Vote counting. After the digitization process had started, every so often progress reports were released with the “latest tallies” of presidential and congressional votes. Comparison of these reports revealed a number of inconsistencies:
 - The total number votes differed from the total number of voters; in some cases by a considerable margin.
 - When digitization had finished and the vote-tallying center closed for that day a report was produced with the “latest tallies.” Another report was prepared on the following day before digitization started and it was found that figures in the two reports did not match. There had been increase in the total number of votes, in spite of the fact that nothing at all had been digitized.
 - The quantity of votes in a subsequent report that covered a greater number of polling stations and voters, when compared with an earlier report, recorded less votes per grouping and fewer voters, when the quantities should have been higher or at least the same in the later report.
 - The total number of polling stations installed appeared as zero in all the “latest-tally” reports.
- **Operation of vote-tallying centers on election day.** These centers were all late getting started. Work commenced at about 21:00 on average, by which stage very few ballot returns had been received. There was a security team present at all centers, as well as party technical representatives and observers from *Transparencia* and the Ombudsman’s Office.

By and large, the process was well coordinated by the separate areas of the vote-tallying centers; it took an average of eight minutes to complete the circuit of sorting, digitization, verification, correction and scanning of ballot returns. Reports were generally prepared after a certain volume of returns had been processed (in most cases at around midnight); in other words, the recommendation to release results every hour was mostly disregarded.

Finally, there was a delay of 48 hours between the close of the polls time and the time the Special Electoral Panels began their oversight and review activities.

All of these problems arose during digitization of the first side of the ballot returns, which contains the votes for president and Congress. It is worth mentioning that the processing of preferential votes was not tested during the simulations.

To date, the ONPE has yet to provide a satisfactory public explanation why these problems occurred.

The ONPE also undertook to provide hourly, and on a diskette, information on the number of votes per polling station before transmission of data. However, that undertaking was not met. Moreover, no reports were delivered on individual polling stations during this process, despite a promise that they would be.

Annex 5 contains a table describing the recommendations put forward by the EOM and the political parties at the various work meetings, as well as progress made in their implementation, and their impact on the electoral process.

Annex 8 contains the documents issued by the National Elections Panel on the results of the general elections of April 9, 2000, First Round.

5. Delivery of Recommendations

From the outset of its activities the EOM made specific recommendations to the government entities involved in the election process, and constantly verified compliance therewith.

The bulletins issued by the OAS Electoral Observation Mission show that there were four areas that were repeatedly mentioned as being critical to the conduct of the electoral process before, during and after election day:

- equitable access to the mass media;
- legal and logistical aspects in the organization of the process;
- need to provide training for election officials and the general public; and
- adequate operation of the computerized vote-tallying system.

The short time available before the second round precluded going into detailed recommendations on the legal framework governing the electoral process, although it was possible to mention a number of elements to take into account for future elections as well as situations that, if possible, should be addressed for the second round.

With respect to other aspects, the EOM/OAS declared its willingness to establish mechanisms that would help the electoral authorities to overcome the problems noted above. The EOM/OAS explained that, in its status as an observer mission, it would not be undertaking any activities that might more properly be regarded as technical assistance, and it insisted that it was the Peruvian authorities who, within their areas of responsibility, must establish mechanisms for overcoming the weaknesses in the electoral process which came to light during the first round.

As a result of the foregoing, at a meeting with the Head of the Cabinet and the senior authorities of the ONPE, a proposal by EOM/OAS was accepted to establish a system of intermediation whereby the Ombudsman, bearing in mind the legitimacy he enjoys in the eyes of the public and taking advantage of the existence of a cooperation agreement between that institution and the ONPE, would channel the observations and suggestions of the Mission itself to the electoral agencies.

In addition, the Mission presented a document outlining urgent tasks to be undertaken for the second round as regards equitable access to the mass media, training of pollworkers and the general public, and adequate operation of the vote-tallying software (Annex 3).

V. Second Round of Elections

1. Background

In its bulletins the EOM/OAS communicated observations and recommendations to the ONPE, which may be summarized as follows:

Lack of effective participation of the contending political groupings in following and monitoring the whole election process. The foregoing was mentioned by the EOM in a statement calling on the political parties to bolster their presence in and scrutiny of the process. That statement concluded with the phrase, “without the vigilance of the representatives of the political parties, the entire Peruvian people loses the election.”

The EOM/OAS said that the political parties should accredit their political and technical representatives with the competent agencies so that they could examine the plans for deployment and retrieval of election materials and be completely familiar with the distribution of polling stations on the country’s electoral map.

The Mission recommended that digitization of ballot returns include the field showing the number of voters and ballots cast at each polling station, in order to avoid inconsistencies in the final tally of valid votes.

The EOM suggested to the ONPE that it provide clear and transparent explanations to the political parties and the general public with respect to the discrepancies between different “latest-tally” reports on the results of the congressional elections and in the counting of the so-called preferential vote.

Finally, the Mission reiterated the need to strengthen training for pollworkers and the general public as a means to ensure equal conditions for the participation of voters in the polls. By the same token it stressed the right of the rival candidates to the same conditions for promoting their campaign messages and government plans in the mass media, in order to ensure that the voters might be informed in the kind of clean and transparent process from which a legitimate government should emerge.

2. Creation of working groups.

As a result of the foregoing and of negotiations in which the principal players in the electoral process took part, the ONPE issued Executive Resolution N° 172-2000-J/ONPE. By that resolution, it was agreed to set up three working groups to address training of pollworkers, elections management, and the vote-tallying system. The purpose of these working groups was to propose to the Head of the ONPE necessary measures for implementing the recommendations put forward by the Ombudsman’s Office and the EOM/OAS with a view to ensuring optimal organization of the second round of the presidential election.

These working groups were composed of technical experts and specialists representing the two competing parties (*Perú 2000* and *Perú Posible*), the Ombudsman's Office in a supervisory role, observers from the EOM/OAS, and the ONPE.

The above resolution also imposed a 15-day time limit on the ONPE to implement the recommendations of the working groups. Following is an account of the progress made in the tasks assigned to the ONPE by the above-mentioned working groups, as well as on other issues which, in the Mission's opinion, needed to be addressed.

3. Electoral training

Article 5 (w) of Law N° 26.486 (Organic Law of the National Elections Panel) provides that it is this agency's function "To design and implement electoral training programs for members of the agencies that comprise the electoral system;" and Article 5 (x), that it is its function "To develop electoral training programs designed to cultivate civic awareness in the citizenry. To that end it may enter on agreements with schools, universities, and the mass media. This task shall not be performed during electoral processes."

For its part, Article 5 (h) of the Organic Law of the National Elections Procedures Office (Law N° 26.487) provides that it is this institution's function to "Disclose by such advertising methods as it deems necessary, the purposes, steps and procedures of the electoral act and, in general, of the processes under its charge;" and in Article 5 (ñ) "To design and implement an operational training program for pollworkers and the general public during electoral processes."

In light of these provisions and of the general situation that training activities were a low priority insofar as electoral logistics were concerned, the OAS Mission, early on in its work, stressed the need to strengthen the electoral training plans being implemented by the ONPE (Bulletin 1 of March 10, 2000, paragraph 11), both as regards mass training of voters (Bulletin 2 of March 17, 2000, paragraph 3 (a); Bulletin 3 of March 23, 2000, paragraph 6 (a); Bulletin 4 of April 3, 2000, paragraph 7), and with respect to training for pollworkers, including the issues of the mechanics of voting, ballot secrecy, and vote collection and counting (Bulletin 2 of March 17, 2000, paragraph 3 (a); Bulletin 3 of March 23, 2000, paragraphs 5 and 6; Bulletin 4 of April 3, 2000, paragraph 7).

Following the first round of elections the overall assessment of the training strategy was that it was weak, both quantitatively and qualitatively speaking. The weaknesses identified showed that it was necessary to redesign the training strategy in order to increase coverage; to review and modify the training materials used by the ONPE; to have available backup training material published in indigenous languages spoken in large parts of the country; and to ensure the mass dissemination of the core messages via an aggressive advertising campaign.

The creation of the working groups by the ONPE brought about a series of improvements in the training programs.

The working group on electoral training (see Annex 11) was set up on April 26, 2000, and held meetings on April 26, 27 and 28. Minutes were prepared at these meetings setting out the agreements that provided the basis of the final document delivered to the Office of the Head of the

ONPE on April 28. The working group held subsequent follow-up meetings for the purpose of ongoing evaluation.

The three work meetings addressed the following items:

- Review of the recommendations of the Ombudsman's Office and the OAS, as well as those put forward by the political parties *Perú Posible* and *Perú 2000*.
- Design of the strategy for announcing vacancies, recruitment, and training of electoral supervisors to be in charge of training pollworkers.
- Review and modification of the training materials used by the ONPE in the first round, namely, the manual for polling station officials, the manual for representatives of political parties, and instructions for the Armed Forces and the police.
- Approval of the core messages to be transmitted by the advertising campaign in the mass media.

The training strategy designed sought to ensure the punctual arrival of pollworkers and to raise the quality of the information imparted to the latter by means of the following methods:

- There would be an electoral supervisor for each of the country's provinces. In the first round there were only 37 such individuals, who were appointed in Lima and performed functions all over the country.
- The electoral supervisors would be trained in Lima and posted directly to each of the country's 194 provinces, and would not work through intermediaries. In the first round, each ODPE head was trained in Lima. They trained a training assistant, who, in turn, provided training to the district coordinators, who then trained the polling center coordinators, who, finally, trained the polling station officials. Thanks to this new strategy, the electoral supervisor, who, at the central level, received good quality training designed on a group basis and incorporating interactive methodologies, would carry out the task of providing training not only to polling station officials, but also to district coordinators and polling center coordinators.
- In the selection process priority would be accorded to persons who were native to or resident in the area to which they would be assigned, and to those with a good command of the native language spoken in that particular region.
- All electoral supervisors would jointly attend a national training workshop, so that they might be imparted uniform information on ways to carry out their activities and to solve problems.
- Electoral training materials would be made clearer by eliminating or correcting aspects that led to errors, and more user-friendly by highlighting areas where particular emphasis was needed (e.g. completion of ballot returns). Furthermore, backup information

material in Quechua would be available in order to facilitate training of polling station officials in indigenous communities.

- As for voter information, campaign messages would draw attention to the issue of ballot secrecy (an Achilles' heel of the first round) and to the new ballot paper. The strategy for disseminating campaign messages would be to use the television and print media, and, in particular, local radio stations, which are especially important for reaching isolated communities.

The recommendations made to the training group covered two aspects: a) emphasis on the requirement that the president of the polling station sign the ballot paper (voting slip); and b) the need to provide special training for illiterate polling station officials.

With ten days to go before the date set for the second round, the initial assessment was positive. The ONPE provided details of the design of a new training strategy that was put into effect with the recruitment and training of a team of 156 instructors, who would carry out activities all over the country. The ONPE also satisfactorily revised and modified the instruction booklets and launched an advertising campaign to inform the electorate about the date of the election, how to vote correctly, and that the ballot was secret.

However, through the observers of the EOM deployed at the various observation offices, it was found that on May 16, in many parts of the country training of polling station coordinators had not yet started, even though it was supposed to have been completed by then. This situation meant that training of pollworkers was seriously behind schedule and that only 10 days remained to train some 520,000 polling station officials and alternates. It seemed unlikely, therefore, that this goal would be achieved.

As regards audiovisual support materials, in several parts of the country it was reported that the training video for polling station officials was not received on time and, although it was known to have been produced, none of the places observed had the video in Quechua, which leads to the assumption that it was never distributed.

On May 21 the EOM/OAS monitored training activities scheduled by the ONPE in various parts of the country: Arequipa, Ayacucho, Cajamarca, Chiclayo, Cuzco, Huancayo, Huánuco, Huaráz, Iquitos, Ica, Madre de Dios, Piura, Puno, Tacna, and Trujillo.

The following observation parameters were used in monitoring these activities:

- Attendance of polling station officials
- Organization conditions
- Presence of representatives of political parties
- Dispensing of clear guidelines to polling station officials
- Comprehension and adequate handling of procedures by polling station officials
- Availability of specimen election materials
- Insistence that polling booths be prepared so as to ensure complete privacy for the voter
- Mention of the time polling centers were supposed to open in order to admit voters

- Clear instructions regarding relations between polling station officials and members of the Armed Forces and the police.
- Insistence on the requirement that voters themselves place their vote in the ballot box.
- Compliance with the provisions in force during the count.
- Correct completion of ballot returns.
- Emphasis on the need to write the number of voters who voted in the respective box on the ballot return.

Under these parameters, the EOM/OAS noted a poor level of organization and a very low turnout of polling station officials at programmed activities. According to reports from the Mission observers deployed around the country, only about 25% of those invited to attend did so. We regard this as evidence of a generalized disinterest on the part of polling station officials, basically because they did not think that fresh training was necessary for the second round of elections (which were only to elect the President and not Congress) and because of elements of uncertainty as to whether the elections would be held at all. The EOM/OAS noted this situation with concern and stressed the need to strengthen training of polling station officials as one of the guarantees that the citizenry vote correctly.

It does not seem to us overly important to start to discuss if this was a training or strengthening exercise. The main thing is not to lose sight of the original objective of the ONPE working group in redesigning the training strategy, which was to overcome the universally acknowledged problems that arose in the first round by ensuring more direct coverage and better quality training for polling station officials that focuses in particular on polling station installation procedure, ballot secrecy, completion of ballot returns, the need to record the number of voters who voted, and relations with members the Armed Forces, all of which, according to the observations of the EOM, are aspects that either were not sufficiently stressed, or simply were not included in the training.

Furthermore, no representatives from any of the contending political parties were present at these activities. The EOM/OAS expressed concern at the repeated attitude of the political parties in failing to involve themselves in proceedings in which their very nature as principal guarantors of the process required them to participate.

We should not neglect to mention that, despite time being against them and the lack of interest, the training supervisors showed willingness to carry out their work, which in many cases entailed going from door to door to motivate and deliver information to polling station officials individually.

4. Election Management

4.1. Background

During its observation work in the first round the EOM identified a series problems relating to aspects of election management. Accordingly, it provided various institutions, the ONPE included, with details of these problems, together with suggestions for their solution.

The ONPE set up working groups that addressed the different problems identified by both the EOM and the Ombudsman's Office. One of these groups addressed the issue of election management. That group held three coordination, and four follow-up, meetings before the EOM made the decision to call off its observation of the electoral process (Annex 10).

Election management encompasses all the different elements of the entire electoral process; it concerns administration of the process and, therefore, covers not only its planning, but also its implementation, monitoring and control.

Problems were identified in the various stages (planning, implementation, control, and monitoring) of the electoral process. By the general nature of its subject matter, the working group on election management addressed and put forward recommendations on issues that also concerned the other working groups. It even addressed aspects inherent to other institutions.

The structure of the report on this area follows the stages mentioned in the preceding paragraph. Lastly, it also includes an evaluation of the progress reports on the tally of congressional votes.

4.2. Problems identified

The problems identified during the first round in the area of election management and programmed for solution by the respective working group are outlined in the minutes of the coordination and follow-up meetings (see Annex 10), and may be described as follows:

4.2.1. Problems inherent to the planning stage

a. Absence of an overall electoral plan for the second round

In the planning stage, the EOM quickly observed the absence of an overall electoral plan and its respective elections schedule for the second round. The EOM viewed this as a major shortcoming in the preparation of the elections. However, technical considerations aside, the political climate of deep mistrust in the electoral agencies meant that this lack lent itself to other interpretations.

In that regard, the EOM, from the outset, continually pointed out the need to have such a plan and for it to include an adequate planning method that allowed for clear identification of activities, time frames, and critical routes, available margins in the process, for the precise purpose of averting, among other things, enormous delays in the steps that follow the voting.

While the working group was carrying out its activities, the ONPE designed and/or developed a bar chart that identified the primary operational activities in the process, but did not include those relating to administrative and financial aspects nor specified critical secondary activities in the electoral process (see Annex 10).

Successful management of any project requires defining at the planning stage all the activities that lead to the accomplishment of the objectives and goals set for that project. The absence of such a plan left players and onlookers alike in the dark as to the progress of activities in preparation for the second round. The first information provided on activities and their time frames was the bar chart. It

is surprising that activities that are as important for any country's democracy as these should be undertaken without having the basic instrument for their programming and monitoring.

b. Absence of specific plans for the second round

As one might logically expect, if no overall plan was designed, then nor would specific plans be prepared for activities such as simulations and deployment and retrieval or collection of election materials (distribution and collection).

The EOM recommended preparation of the above-mentioned specific plans and suggested that collection of ballot returns be included in the national simulation. Similarly, it recommended that the working group carry out a study charting the flow of collected ballot returns to vote-tallying centers.

The experience of the first round indicated a need clearly to determine the workloads that each vote-tallying center could expect. The sample used in the simulated collection of ballot returns conducted later was selected based on the study that was prepared.

The process was tackled using only incomplete components of the specific plans that were required. With respect to the simulation plan, although it defined the sample geographical area in which ballot returns would be collected, it neither stated the objectives and goals of the simulation, nor contained a timetable of activities. The aspects to do with vote-tallying are addressed in the relevant section below.

As to the election materials deployment and retrieval plan, the original design (which changed on implementation) set out the distribution routes: eight air routes and 20 land routes. With respect to retrieval (collection), despite the suggestions of the EOM to prepare a single plan at the national level, the ONPE only produced a study on the results of the retrieval process in the first round and said that it was up to each Decentralized Elections Procedures Office (ODPE) to design such a plan.

4.2.2. Problems relating to the implementation stage of the process

a. Monitoring of production, preparation, distribution, and collection of election materials by representatives of the contending political parties

The ONPE made arrangements for the participation of representatives in several of the activities involved in the process. The representatives of political parties were actively involved in important activities, such as the design of the ballot paper (voting slip) as well as monitoring production and packing of election materials (voter lists, ballot returns, ballot papers).

During the process the EOM expressed its concern at the absence of party representatives in monitoring activities relating to distribution of materials. For instance, no representatives of political parties were present to witness the dispatch of election materials by air.

b. Purging of the Electoral Roll

One important initial problem that had to be tackled concerned the Electoral Roll. Various complaints were lodged during the first round alleging that deceased people were registered on the roll and that members of the Armed Forces and the police were also registered and voting.

The working group decided to draw public attention to the effects of ONPE Executive Resolution No. 114-2000, which provided for the receipt and processing of complaints on this matter. The estimated period, as provided by ONPE, needed for processing complaints was five days. The ONPE published that resolution but never issued a report on the results thereof.

c. Lack of or obsolete procedures

It was crucial also to design or update procedures in the area of materials distribution and collection. Accordingly, guidelines were drawn up on the deployment and retrieval of materials. In the same context guidelines were also issued on recruitment of ODPE and vote-tallying center personnel. , According to the ONPE, owing to time constraints, for the most part the same personnel as were involved in the first round were employed.

The working group also prepared guidelines on implementation and monitoring of printing, inspection, and quality control procedures with respect to voter lists, ballot returns, and ballot papers. This was one of the innovations introduced in the second round.

d. Lack of a strategy for communication of results

The EOM, after finding that no strategy for official communication of results existed, suggested that one be created. It was recommended that the ONPE and the contending political groupings try to reach a consensus thereon.

The EOM justified its proposal upon finding that retrieval of ballot returns could be more efficient in some parts of the country than others, which, when combined with the voter preferences that the tally of those ballot returns would reflect, could produce incomplete information on results that differed from the actual trend at the national level.

Measures in this area progressed as far as consultations with the leadership of the two political groupings. The implementation of any electoral process is strengthened by timely communication of the official results.

e. Inadequate availability of resources

During the first round problems arose due to the insufficient number of vehicles provided for collection of materials.

The working group recommended increasing the number of vehicles allotted to the metropolitan Lima area. The ONPE allocated one transportation unit for each polling center.

The same was true of the number of the ONPE personnel assigned to provide assistance to polling station officials during the first round. Accordingly, 1,556 additional personnel were hired for the second round, which meant that for every 10 polling stations there was one ONPE coordinator on hand to provide assistance.

It was recommended that more appropriate premises be sought for housing ODPEs, since they were found to have problems with space and suitability.

Another item on the agenda was movement of polling stations to indigenous communities. This item addressed the problem that during the first round some polling stations were located at a considerable distance from the communities they were supposed to serve. The representative of the Ombudsman's Office was tasked with informing on needs with respect to those changes.

f. Role of the Armed Forces and the mass media

Two issues were addressed with regard to the leading role played by the Armed Forces at polling centers, where they had an active part in putting up signs and providing information to voters. The first issue had to do with the elimination of Article 12 of the Elections Booklet for members of the army and the police. That article established the basis for interaction between polling station officials, party representatives, and the security forces during the first round.

Article 12 was removed from the Elections Booklet and the ONPE sent a communication on the matter to the Office of the General Commander the Armed Forces [*Comandancia General de la Fuerzas Armadas*] (Annex 10).

Also on the question of the Armed Forces, approval was given for the inclusion of a security envelope (nontransparent) for the ballot return that the law required to be delivered to that institution. This last item was included in view of the fact that, owing to its logistical capacity, the aforementioned institution could process and know the results before the electoral agencies.

The legal basis for this decision was Article 310 of the Elections Law, which can be interpreted in the sense that the sole purpose of the ballot return delivered to the Armed Forces is to act as a backup in case of loss of the other ballot returns.

The issue of unequal media coverage was also addressed by the working group on election management. In response to the complaint lodged by the political party *Perú Posible*, the ONPE was requested to take steps aimed at overcoming the impasse reached with the State television channel (*Canal 7*), which had refused from the outset to lease advertising space for that political party.

It was later noted that said services were duly leased. (For further information on this point see Chapter VI: "Assessment of access to the mass media".)

g. The parliamentary vote-tallying process

Since the EOM regarded it as a matter of priority to analyze the results provided by the ONPE on the parliamentary elections, it performed an evaluation of the behavior observed in the data contained in the various progress reports.

Annex 10 contains the charts and graphs referred to below and enables a follow-up analysis of the tallying process.

The ONPE released two latest-tally reports on the same day. At 11 a.m. on April it announced the latest tally at 99.972% of the count completed, and at 6:52 p.m. it provided another report, this time at 61.447% of the vote counting completed. The ONPE gave no explanation as to why the first report recorded a higher percentage of counted votes.

To make it easier to understand the analysis, we will compare the differences between the fourth report and the consolidated result at 100% of the tally published at the ONPE web page. Between the fourth report (issued on May 3 at 7:18 p.m.) and the consolidated result at 100% of the tally there was a drop of 133,317 votes. The only possible assumption (according to various verbal explanations offered by the ONPE officials) is that these were votes challenged between May 3 and the 100% consolidated tally.

The volume of votes for some parties rose (as would seem logical in any such process) between the fourth report and the consolidated total at 100%. The foregoing was the case for the following parties: *Acción Popular*, *Perú 2000* and *Perú Posible*.

The other parties showed significant declines: *FREPAP* lost 30,432 votes between the fourth report (of May 3) and the consolidated total at 100%; the same comparison shows *AVANCEMOS* with a loss of 9,022 votes; also between the fourth report and the consolidated total *APRA* lost 145,358 votes; in the same analysis, the votes for *UNION POR EL PERU* descended by 105,778, those for *SOLIDARIDAD* fell by 35,778, the number votes for *FIM* went down by 152,386, and, finally, *SOMOS PERU* showed a fall of 96,772 votes. In the final reckoning, the combined declines of the aforementioned parties came to a grand total of 575,526 votes.

If we add up the gains of the three parties whose votes rose between the fourth report and the consolidated total (*ACCION POPULAR*, by 11,285 votes; *PERU 2000* by 170,513 votes; and *PERU POSIBLE* by 260,411) we find an overall increase of 442,209 votes.

The total difference of votes is 133,317. It is possible that these were the ones that were challenged, assuming that most of the votes lost by the forenamed parties were won in the end by the latter three mentioned above.

In the case of four parties, between the fourth report (May 3) and the release of the consolidated total, the number of congressional seats won remained unchanged: *ACCION POPULAR* (with three), *FREPAP* (with three), *AVANCEMOS* (with four), and *SOLIDARIDAD* (with five).

Four parties lost seats between the fourth report and the report containing the consolidated total: *APRA* (down from eight to seven), *UNIÓN POR EL PERÚ* (down from four to three), *FIM* (down from 11 to nine), and *SOMOS PERÚ* (down from 10 to eight). In the final analysis, only *PERÚ 2000* and *PERÚ POSIBLE* showed gains between the fourth report and the release of the consolidated total: the former obtained two additional seats, while the congressional seats of the latter increased by four.

From the foregoing numerical analysis it seems odd that approximately 6% of the total votes cast should have caused changes that were harmful to some and beneficial to others for no clear or comprehensible reasons, particularly when the proportion of votes left to count (between the fourth report and the consolidated total) was only 0.048%.

Clearly, without information regarding the challenged votes and without knowing the underlying causes for such bewildering changes, anyone might conclude that:

- a. the ONPE never had a strategy for communication of the results and that its vote-tallying system contained very serious irregularities and, therefore, generated a great deal of distrust; and
- b. in the parliamentary elections some parties and their candidates were harmed for no apparent reasonable cause (supported in the latest-tally reports).

h. Decision making

Decision-making is an important part of any management and is basically the managers' function.

The Mission discovered fickle, untimely, and incorrect decisions that resulted in courses of action, which, despite the fact that the ONPE accepted as sound observations made at meetings and coordinations, continued unchanged.

Lack of coordination which resulted in squandering material, technological, and technical resources due to disorganized and improvised management. This can also lead to excessive expenditure on processes which might otherwise have worked effectively had the necessary, timely communications and a plan and schedule for implementation of logical steps been in place.

Unclear instructions, suggesting lack of coherence in guidelines. This leads to lack of confidence at the time of implementation of the process and reveals the need for a governing instrument for assessing, organizing, monitoring, and evaluating the aggregate value of measures and decisions implemented.

The low quality of electoral processes, which was measured not only by the positive and periodic results produced by a given task, action or project, but also by the direct ratio between the excessive costs it created for all the products generated by the system and its aggregate social value.

Clear examples of the foregoing are:

1. Ambiguous results of the vote-tallying system resulting from the inconsistencies in the progress reports on the tally of preferential votes for Congress in the first round, which were addressed in the preparations for the second round. Inadequate improvements in system tests, or simulations as they were termed. A level of relative acceptability was subsequently achieved, provided that objective changes were made to the prior and basic conditions of the process.

2. The terminally-postponed clarification of the complaint regarding the million allegedly forged signatures on behalf of the political group *Perú 2000*, and public signs of a consistent lack of will to investigate and resolve the case on the part of both the Attorney General's Office and the electoral agencies.
3. Inadequate training of polling station officials and lack of voter information, which was reflected during the first round in the tardiness and uncertainty of polling station officials nationwide in installing polling stations, opening the poll, and counting ballots;
4. Absence of ballot return retrieval plans, which was confirmed by the coordinators observed by the Mission at departmental seats.
5. Absence of an overall electoral plan and its subsequent duplication at the departmental level, which was reflected in the ignorance of the heads of the decentralized departmental the ONPE offices.
6. Lack of clear parameters and criteria for measuring results that might confirm a technical and political commitment to reprogram the process based on the decisions and consensualized recommendations of the working groups.
7. Lack of clear and timely disclosure by ONPE of progress and difficulties encountered in the electoral process.

4.3. Conclusion

In all areas it was recognized that there was a need for an instrument that precisely set out timetables, activities, and costs of the process. Instead improvised logistics were used. Accordingly, there was no effective planning of contingencies for the processes and procedures in the "model" used. Contingency plans were only made for elementary difficulties, such as problems with the computer system, communications, and electricity supply. Other areas, such as training for polling station officials and voter information, seemed to lack importance.

Overall, the surprising thing about the management of these elections was the huge contrast between the sophistication of the technology developed to provide security measures to safeguard the integrity of ballot returns, and the persistent lack of adequate planning and effective management of elementary aspects of logistics and computer systems, which would have made it possible to have better procedures and would have helped to eliminate the risk of perfectly avoidable events and consequences that had an unnecessarily high social and political cost.

5. Vote-tallying system (Second round)

5.1. Background

In the case of the working group on the vote-tallying system, its members identified a series of problems and concerns, which were catalogued, presented and discussed with the ONPE technical experts with a view to addressing them. The EOM, for its part, had recommended to the working group the amendment of various aspects of the requisite qualifications for recruiting personnel for vote-tallying centers, as regards age, education and experience. It should be mentioned that for the second round the ONPE retained the services of a firm of external consultants with computer experts who were incorporated as members of the working group on the vote-tallying system.

Initially, the political parties, the Ombudsman's Office and the EOM/OAS believed that the software to be used in the second round would be the same as that used in the first round, after the necessary corrections, improvements and adjustments had been made. Based on the accumulated result of the prior testing and on the problems detected and analyzed, it would be possible effectively to tackle the task of revising the vote-tallying system, bearing in mind that in the second round there would not be the complications associated with the congressional votes, but would only entail tallying votes for two presidential candidates.

Starting from that premise, the working groups initiated their activities on April 25 by preparing a detailed schedule of meetings, proposing recommendations, and drawing up a list of tasks and activities for monitoring implementation of improvements. The basic aims of the first three meetings were to identify the main vulnerabilities; inconsistencies found in the vote-tallying software during the first round; and measures that might improve and simplify the vote-tallying system and thereby enhance its integrity and security.

However, on May 12, the ONPE made the surprise announcement that it was discarding the software used in the first round in favor of preparing a new system for the second round that incorporated a new software platform for the development of processes and the user interface. This new software was developed exclusively for the vote-tallying process in the second round of the presidential elections. The decision to develop a new system with a simplified structure was based on the fact that the system used in the first round did not guarantee the requisite integrity, security and reliability.

5.2. Objectives

For the second round the technical mission of the EOM focused its attention on ways to improve the vote-tallying system. The procedural and management problems identified in the first round were documented and delivered to the ONPE for consideration. Consequently, the broad objective of the EOM in this working group was to provide technical recommendations and suggestions to the ONPE that might enable the development and implementation of a reliable and secure vote-tallying system. Included among the specific objectives were:

- To monitor and ensure implementation of the suggested changes and improvements in data integrity and security of system access.

- To verify implementation of the data-transmission security mechanisms.
- To install and validate the functionality of the vote-tallying system.
- To observe and verify that inconsistencies and problems found in the simulations are resolved and the respective corrections implemented.

5.3. Methodology

The methodology employed in the second round was much the same as that used in the first. Included among the specific activities carried out were:

- Work in conjunction with the Ombudsman's Office in order to coordinate documentation and presentation of recommendations to the ONPE.
- Coordination and channeling of concerns and requests made by *Transparencia* and *Consejo por la Paz*.
- Work meetings at the EOM offices and preparation of checklists for use in monitoring implementation of improvements by the ONPE.
- Attendance of simulations, documentation of problems found, and formal transmission of corrections to the ONPE.
- Installation of the vote-tallying software at the offices of the EOM and performance of the necessary internal tests to verify the functionality of the system.

Annex 13 contains the minutes of the meetings of the Working Group on the vote-tallying System.

5.4. Conduct of the work

It was not possible to carry out functionality tests on the vote-tallying software because, as the document in Annex 12 confirms, the final version of the software was only delivered to the EOM on May 26. The technical team of the EOM considered that once the entire infrastructure simulating the ONPE environment was installed, including two vote-tallying centers and the transmission system, at least 10 full days of work would be needed to test satisfactorily the operation of the vote-tallying system. Since the election was held on May 28 it was impossible for the EOM to carry out any sort of verification.

The programmed tasks that the EOM had planned for the 10 days of testing to verify the functionality of the system were as follows:

- System installation
- Preparation of test cases
- Determination of what results to expect the system to produce once the test cases were applied

- Validation of user interfaces
- Input or digitization of test cases in the vote-tallying program
- Output of results (reports)
- Comparison of actual results, reports, and expected results from test cases
- Data transmission and consolidation tests.
- Preparation of a report containing the findings

For three weeks the EOM attended work meetings held at the offices of the ONPE. A checklist or verification chart, which was updated after each meeting, was used to monitor measures implemented. The progress chart and results of the work sessions appear in Annex 5.

5.5. Conclusions

The vote-tallying system and the processes used by the ONPE in both the first and the second round were not fully verified and validated by any of the political parties or by any of the observer organizations, including the technical team of the EOM.

Accordingly, the EOM cannot vouch for the reliability of the vote-tallying system used by the ONPE in the two rounds of elections. The reason for this is that in both rounds of voting the ONPE did not provide the final version of the software and the relevant documents in time. In ideal circumstances something as critical and visible as a vote-tallying system should undergo independent verification and validation in order to confirm its reliability.

According to observations in both rounds, the software was developed at the ONPE in an environment that was hurried, poorly planned, and featured the use of rather questionable development methodology. As a consequence, the ONPE used most of the simulations to test details of the software (components, integration, etc.). In normal circumstances, simulations, as their name suggests, are system acceptance tests in which users create a simulated environment to iron out and correct operating problems and logistical problems and to test the functionality of a system from start to finish (arrival of returns, count, transmission, consolidation, and reports).

In order to fulfill the objectives of a simulation, the vote-tallying system should have been completed and “put on ice” days before the elections, in order, to conduct simulations on the final (or almost final) version. This would have avoided the need to make substantial changes to the system with hours to go before the count starts, as happened in the first round.

There were problems and inconsistencies in program management in areas such as changes to and updating the vote-tallying software, which resulted in distribution and installation of components (programs) that were not up to date. In a software development environment where there is a team of programmers, as was the case at the ONPE, it is paramount that the program management oversee monitoring, control, and distribution of different versions of developed software. On more than one occasion the versions of the vote-tallying software distributed by the ONPE contained components that were incompatible with other components due to poor synchronization of versions. In some cases, this made installation of the software impossible and, in others, generated inconsistent reports. For example, in the simulation of May 24 (the last national simulation) the software installed on the servers at the ODPE in the Lima district of San Miguel contained an out-of-date component that resulted in inconsistencies in the consolidated reports.

While the ONPE management may have always declared its willingness to collaborate, in terms of software planning and programming, and of supervision and monitoring of the development team, it left a great deal to be desired.

In both rounds of elections, the ONPE development team had to work incessantly and put in a lot of overtime (almost around the clock) to reach the assigned objectives. For something as supremely critical and conspicuous as the vote-tallying software, the ONPE management ought to have planned in greater detail the scope and the completion deadlines of the application, as well as measurement of progress, and well-established quality controls, in order to avoid the difficulties that arose. The lack of planning and foresight was demonstrated by the drastic alterations made to the software used in both rounds.

In the first round the ONPE had ample time to develop, test, and complete the vote-tallying software well before election day on April 9. As was publicly announced in the bulletins of the EOM, the technicians of the EOM identified functional problems with the software (inconsistencies in consolidation of preferential votes, to cite one example) hours before the polls closed.

Although there was considerable improvement and progress in communication and information sharing among the ONPE, technical representatives of the political parties, and representatives of the observer organizations, in many cases this communication was not consistent and fluid. For instance, owing to the errors and inconsistencies found in the vote-tallying software used in the first round, drastic changes in the software were urgently needed for the second round.

The two alternatives for improving the vote-tallying system in the second round were:

- (1) to correct and refine the system used in the first round; or
- (2) to develop a new system using basic tables, such as information on polling stations, geographical location, etc.

In fact, as mentioned, the requirements for the second round changed, given that the functionality of the program was reduced to digitization and scrutiny of presidential ballot returns for two candidates and to the tally, collection, and consolidation of ballot returns in the database at the ONPE headquarters.

Initially the ONPE communicated that they were pursuing the first alternative. A series of meetings were even held to discuss the status of corrections made to the software used in the first round. Two weeks before the elections the ONPE advised the working groups that the decision had been made to pursue the second alternative, to which end the development platform was changed and a completely new team of programmers was hired. To make matter worse the ONPE never provided details on the structure of the new system. The members of the working group felt they had been duped by being made to work on one thing while something else had been intended. This intensified the atmosphere of mistrust.

Another area that left a lot to be desired was the training of technical personnel in charge of management and administration of ODPEs. Many times it was found that administrators were unable to answer questions convincingly. For instance, during the simulation of May 24, a few days before the elections, the systems administrators of the ODPEs situated in the grounds of the *Feria del*

Pacífico had great difficulty replying to questions about and explaining the workings of the Oracle database audit log. In order to activate the log, which was a requirement agreed by the working group it was necessary to call in a specialist, which took too long. This raises questions as to how problems of this type would be solved if they occurred at ODPEs located in provincial areas of the country.

Finally, in neither round of elections did the ONPE successfully complete a simulation and, therefore, demonstrate the integrity and security of the vote-tallying system. At no time during the first round was a national simulation carried out. Many functions of the system itself were untested. Data-transmission was not carried out using dedicated lines; instead information was transmitted via an FTP link without any security mechanisms in place, thereby compromising the integrity of the data. In sum, in the first round many of the security and integrity safeguards announced and described by the ONPE in the documents provided were not used.

In the second round the ONPE implemented a series of improvements and corrections designed to ensure the requisite reliability of the vote-tallying process. A series of changes and measures were announced in the last simulation on May 24, when it was possible to observe some of those improvements in operation. The ONPE made considerable improvements to the software itself. It was not possible, however, to verify implementation and use of security mechanisms intended to guarantee the integrity of data during transmission and consolidation thereof at the ONPE headquarters. Accordingly it was considered that a later date than May 28 was needed.

6. Reports requested of the ONPE

The EOM was particularly insistent in requesting reports from the ONPE concerning the discrepancy between votes and voters that was observed in the progress reports and the final consolidated report of the first round.

An analysis of that report, which, apart from being tardy, reflected the enormous inconsistencies and shortcomings of the vote-tallying software, determined that the difference between votes and voters was due to the fact that officials at 12,084 polling stations failed to include the figure corresponding to the number of voters (Annex 10).

The EOM regarded such a line of reasoning to be flawed since the oversight or incapacity of polling station officials was no excuse why a vote-tallying application should not have been able easily to identify information such as the number of ballots cast from other data.

In its report, the ONPE said that on reviewing the 12,084 polling stations, it was found that a total of 1,588,482 voters had not been registered. However, the damage of reporting that there were more votes than voters had been done, with very negative and far-reaching consequences for the electoral process.

The ONPE report inverted the figures: after the inclusion of 1,588,482 voters, it was found that there were 25,056 more voters than votes.

The ONPE was also asked to explain and report on the inconsistencies between successive progress reports that marked a rise in the number of polling stations but a decline in the number of votes.

With respect to these two reports, the ONPE was also requested to make these explanations public and, moreover, to include a third report on the control mechanisms designed to prevent these differences recurring in the second round.

No report on the inconsistencies between the reports was ever delivered, much less made public.

The third report on control mechanisms never materialized either. It is to be assumed that those mechanisms were directly linked to the vote-tallying system software and routines.

In connection with the case of the allegedly forged signatures of supporters of the electoral alliance *Perú 2000*, the ONPE was also requested to publish the names of those supporters on its web page.

In that respect, the ONPE said in the course of the meetings of the working group that it was not possible to accede to such a request based on the right of all citizens to privacy with respect to their party or political sympathies. That reasoning was based on the decision of the National Elections Panel of September 2, 1999 (see Annex 10).

7. Legal and electoral considerations regarding the timing of the second round of elections

One of the issues that caught the public's attention had to do with the legality and legitimacy of the decision of the National Elections Panel to call the second round of elections for May 28, 2000.

In addition to its extreme socio-political importance, this issue was also brought up in petitions lodged by various political groupings with the National Elections Panel, which, as well as raising issues inherent to the conditions of the process and its timing in order to ensure it was carried out in accordance with the laws in force, posed legal questions that, in view of their connotations as regards the development of the process, are closely examined in this section.

The arguments advanced by the National Elections Panel to support its decision, were framed by provisions contained in the Constitution and the regulations thereon set forth in the Electoral Law. With respect to those arguments, the provisions contained in Articles 18, 23, 80, 322, and 323 of Law 26859 and Articles 111, 176, 178 (1), and 181 of the Constitution merit particular attention.

Indeed, as regards the matter that concerns us here, the aforesaid Article 111 of the Constitution provides that:

“...If none of the candidates secures an absolute majority a second election shall be held within 30 days of the proclamation of the result of the official tally.”

In invoking the above-cited provision, the National Elections Panel, by Resolution N° 732-2000-JNE of May 25, 2000, concluded that said provision taken in conjunction with Article 323 of the Electoral Law made it “necessary to establish that said legal basis is not in accordance to law, given that it is required that the aforesaid electoral document be prepared when the electoral process concludes in either the first or the second round, as appropriate, as has occurred in previous electoral processes.”

“Not to have set that date as the date of the second election for President and Vice President of the Republic within 30 days of April 29, 2000, when the results of the presidential election of April 9 of this year were announced, would be in violation of express provisions contained in Article 111 of the Constitution of Peru and Organic Law N° 26859 (Electoral Law), which would constitute a serious breach of the Constitution and the law.”

However, a more detailed analysis of the Organic Law, allows the conclusion that, in fact, the General Certificate of Proclamation [*Acta General de Proclamación*] of the National Elections Panel mentioned in Articles 322 and 323 of Law 26859, does not provide for separate certificates to be issued for President and Congress. In fact, the aforementioned Article 323, in describing the requirements for drafting the aforesaid Certificate (note use of the singular), sets out in successive clauses (3. and 4.) the data relating to both branches of government.

The foregoing is also evident from the methodology or structure of the Code, which sets out in a single chapter the provisions governing the “Election of President, Vice President and Congresspersons,” (Chapter 2, Title XII, Tally and Proclamation).

Indeed, Article 322 provides that the National Elections Panel, after receiving from the ONPE the communication provided for in Article 320, must, prior to proclamation:

- Assess all the General Tally Certificates of the Special Electoral Panels; and
- Rule on observations put forward by its members, candidates or political party representatives.

In this regard it may also be deduced that independent inspections of elections for President and Congress are not permitted since the Certificates to be assessed by the National Elections Panel are drafted by the Special Electoral Panels, in accordance with Article 318 of the same electoral code. Said article, in turn, requires that in each electoral district the Tally Certificate issued by the respective Special Elections Panel contain a detailed list of all of the ballot returns forwarded by polling stations, which, as we know, are not prepared with separate statements of poll (certifying installation, voting, and close) to distinguish between different elections. The foregoing is further supported by the requirement contained in Article 323, Clause 1, which expressly sets out the conditions of the General Certificate of Proclamation.

The above interpretation is reached by a uniform analysis of all the laws, given that, due to the particular way that the government institutions were designed in Peru following the constitutional reform of 1993, presidential and vice presidential terms coincide with those of congresspersons. Those terms conclude simultaneously after five years in office, without partial renewal of Congress, which, as we know, is composed of a single chamber (Articles 90 and 110 of the Constitution).

This reading, if admitted, indicates -contrary to the decisions of the national institutions-, that the Certificate of Proclamation is a single and indivisible document that must comply with specific requirements stipulated by the Organic Law (Articles 320 *et seq.*). Those requirements would appear not to have been met in the above-cited Resolution 570-2000-JNE, rendering the act of convocation for May 28 provided for thereby completely invalid.

The EOM/OAS took the liberty of carrying out this analysis in light of the importance of this issue for the conduct of the second round and the seriousness of the successive events. The EOM/OAS believes that it has evidence to show that the law provided the electoral authorities with other alternatives that granted them flexibility and would have helped to improve the conduct of the second round of elections.

8. The frustrated possibility of postponing the date of the second round of elections

The EOM/OAS, as mentioned, was aware that in the last hours before issuing its final assessment of the Peruvian electoral process, negotiations, initiated by the executive branch on Tuesday, 23, were underway regarding the possibility of extending the time limit for the second round, without violating constitutional provisions.

It should be mentioned that tensions were already running high following the attempted manipulation of the presence of delegates of the EOM and of the Ombudsman's Office at the first vote-tallying simulation for the second round to suggest that their mere physical presence constituted an endorsement. It should also be recalled that at around this time the opposition candidate, Alejandro Toledo had begun to create a good deal of confusion with public statements to the effect that that he did not regard himself as a contender in the second round on May 28, although he remained a candidate, and demanded a postponement of the polls by several weeks. He urged his sympathizers and supporters to boycott the polls in a variety of ways should that not occur.

It also necessary to remember the massive wave of official publicity that surrounded the simulation, reminding the public of the penalties they would incur if they failed to fulfill their obligation to vote.

The National Elections Panel announced publicly in the afternoon of Thursday, May 25, that it was dismissing the petitions for postponement lodged with it and confirmed May 28 as election day.

These circumstances meant that, on top of all the shortcomings, abuses, irregularities, and omissions that had accumulated throughout the process, now there was going to be a second round with only one candidate. The Peruvian electorate would go to the polls on Sunday, May 28, to exercise their right to vote with just one candidate: President Alberto Fujimori.

The now well-known decision was then taken to pull out the field observers of the EOM deployed in the country's interior, and to reduce the Observation Mission to a small group that would record public events in the capital, under the coordination of the Deputy Chief of the EOM, while the Chief of Mission withdrew altogether. Other organizations adopted similar decisions to cease observation. The European Union suspended the mission that was due to come from Europe.

9. Other considerations

The activities undertaken by the EOM/OAS were consolidated at the highest possible level with the formation of working groups on clearly defined and operational issues, such as the Working Group on Election Management, set up to address issues connected with the logistics of the process overall; the Working Group on Electoral Training which devoted itself to an objective analysis of the scope and coverage of the processes of recruitment, coaching and training of pollworkers and voter information, which were revealed to be inadequate and of a poor quality in the first round; and the Working Group on the Vote-tallying System, which advised the ONPE on application of measures to correct the systematization of tools and software, in order to ensure that the election results were issued in a clear and transparent manner, since that process was widely questioned in the first round and had clear inadequacies.

At the same time, the EOM/OAS issued precise instructions to its observers deployed around the country regarding the need to provide advice on and to verify replication of instructions and measures that emanated from the electoral agency (ONPE) and were designed to comply with the agreements reached at coordination meetings in Lima of the agencies involved in the process: National Elections Panel, National Elections Procedures Office, the contending political parties, the Ombudsman's Office and, in its capacity as an observer, the Electoral Observation Mission of the Organization of American States.

Throughout the observation process the EOM/OAS, in a manner in keeping with the Constitution, reported to the electoral agencies and the general public, by means of public notes and bulletins, on progress of activities designed to correct the glaring inadequacies in the design, supervision and implementation of the elections process.

The aim was to restore the faith of the Peruvian people in their electoral authorities and in the election results. Accordingly, it was suggested that the date of May 28 be postponed by at least 10 calendar days. This date was considered reasonable for achieving the minimum results proposed as regards training and election management, and revision of the vote-tallying software for the second round, which had been changed without warning (accordingly the software used in the first round was discarded, which meant, therefore, that the work done on it had been for naught).

The EOM/OAS also formally placed the technical expertise of its observer team at the disposal of the Peruvian electoral authorities, with a view to making a qualitative contribution to help it carry out its assigned task in a successful, clear, and transparent manner, so that the end result might be the general acceptance of the electoral process in Peru as unimpeachable and legitimate.

VI. Assessment of access to the mass media

1. Background

During the first round of elections the mass media were roundly criticized for failing to respect the basic principles of journalism: plurality, objectiveness and impartiality.

For this reason the EOM/OAS implemented a project on the mass media, based on its own readings and on systematization of existing information, that would provide it with the necessary data to address this reality in a more objective and specialized manner.

The following issues were examined:

- Legislation governing access for presidential candidates to the mass media during election processes in Peru;
- Comparative analysis of national legislation in other countries of South America;
- Monitoring of compulsory election coverage by state-owned media outlets and voluntary coverage thereof by private ones;
- Political plurality in the print and television media; and
- Campaign advertising by presidential candidates on the television networks.

Based on this information, a set of recommendations and action guidelines were drawn up with a view to implementation for the second round of elections, in order to help strengthen democracy in the country and contribute to the transparency of the electoral process. Those recommendations and guidelines were forwarded in due course to the various contending political camps, representatives of the government, and the electoral agencies in charge of the process.

Although progress was made in this area in the second round of elections, it proved insufficient. In spite of signs that the public television networks were opening up in the first half of May, as the date of the elections neared biased reporting and smear campaigns reappeared in all the mass media. This provoked the deep distrust of the electorate, as well as huge public dissatisfaction with the behavior of the media and the conduct of the elections process as a whole.

2. Problems, recommendations and measures implemented in the second round of elections

Following is a summary chart on the various issues regarding access to the mass media addressed by the EOM prior to the second round of elections. The chart mentions problems detected, recommendations advanced by the EOM/OAS, and measures implemented by the mass media or other institutions. All of this information is based on the monitoring of each issue by the Mission, the results of which are discussed at greater length in the study entitled "Access to the mass media for presidential candidates during the 2000 general elections in Peru" (Annex 4).

ISSUES	PROBLEMS DETECTED	RECOMMENDATIONS OF THE EOM/OAS	MEASURES IMPLEMENTED
<p>STATE-OWNED MEDIA</p>	<p>By the first week in May the ONPE had still not formally announced a decision regarding compulsory election coverage by the state-owned mass media, even though, by law, this was required to resume 30 days prior to the elections scheduled for May 28. Given the failure to establish a different operating framework for the second round of elections, it was assumed that the conditions of the previous round of elections would persist.</p>	<p>Therefore, the EOM/OAS appealed to the ONPE to lease, as soon as possible, the necessary advertising space in the state-owned mass media.</p>	<p>On Saturday, May 6, the ONPE drew lots for free publicity space in the state-owned media that would enable the candidates to disseminate their government plans. Accordingly, those spaces were in operation by May 7.</p> <p>In this regard it was mentioned that in the case of the state television channel, <i>Radio Nacional</i>, and <i>La Crónica</i> newspaper, those spaces would consist of 30 minutes per day distributed equally between the two candidates and would be broadcast from May 7 to 26. In the case of print media, the government plan of either candidate would be published once only in the Official Gazette, <i>El Peruano</i>: on May 22 in the case of <i>Perú Posible</i>, and on May 24 in the case of <i>Perú 2000</i>.</p>

ISSUES	PROBLEMS DETECTED	RECOMMENDATIONS OF THE EOM/OAS	MEASURES IMPLEMENTED
PRIVATE MEDIA	During the first round of elections, following the recommendations made by the OEM, the public television networks, in a step aimed to correct the inequitable access of candidates, established free elections coverage spaces for presidential and congressional candidates. However, these spaces were not available in the second round.	In order to ensure that these elections were as transparent and fair as possible, that presidential candidates had the opportunity to communicate their government plans, and that the public was kept well-informed, the EOM/OAS called upon all the owners of mass media outlets to make these spaces available once again.	It should be mentioned that this recommendation was not heeded by the private mass media outlets in the second round of elections.
CAMPAIGN ADVERTISING	This issue was widely debated following the first round of elections and a series of complaints were made regarding irregularities in the leasing of campaign advertising space in the various mass media. Although, during the second round of elections, these spaces began to be leased on April 24, by the first week in May the mass media had yet formally to announce a decision in respect of this issue.	The EOM appealed to all mass media outlets, to publish their official rates for leasing those spaces and the steps to follow in order to do so, in order to put an end to the distrust that enveloped this issue.	On May 6, an official communiqué from the Radio and Television Association said that those spaces were available for lease by the various candidates. However, no mention was made with respect to rates.

ISSUES	PROBLEMS DETECTED	RECOMMENDATIONS OF THE EOM/OAS	MEASURES IMPLEMENTED
STATE ADVERTISING	Although the law contains no formal provisions regarding suspension of state advertising in an electoral process, in the first round of elections the advisability was evaluated of suspending such spots during the elections process, since it was felt that they were being used by the government candidate for electoral purposes. However, by the first week in May, the Government had still not issued an official decision concerning this issue, and, meanwhile, state advertising continued to be broadcast by the mass media.	In light of this situation, the EOM/OAS made an appeal for this advertising to cease until after the elections.	On May 6, in an official communiqué from the Office of the President of the Cabinet, an undertaking was given to remove all state broadcasts in the mass media for the duration of the electoral process, with exception of those relating to government procurements and purchases, and announcements of automatically expiring procedural deadlines.

POLITICAL PLURALITY IN THE MEDIA	One of the most widely debated issues during the first and second round of elections was the lack of equitable and objective access to the mass media for presidential candidates.	On this issue, the EOM/OAS appealed to all the mass media, to provide pluralistic coverage of the presidential candidates, to desist immediately from smear campaigns, and to abide by the basic principles of journalism, namely impartiality and objectiveness.	In the second round of elections, although there were some signs of greater openness as regards access that the media gave to the presidential candidates, these were inadequate, since the two candidates were not treated in a pluralistic manner. Furthermore, the smear campaigns continued, highlighting the polarized environment in which those media operated, where the vast majority evinced a clear editorial bias against or in favor of one candidate or the other, depending on the particular orientation of each media outlet.
TELEVISED DEBATE	In the second round the contending political parties opened talks aimed at defining the conditions for holding a debate between the two presidential candidates. This time the television networks declared that they would be willing to broadcast such a debate on national television. It is worth mentioning that on Thursday, May 4, the talks between the aforesaid parties were called off.	When the possibility emerged that such a debate might be held, the EOM/OAS, said in an official communiqué that it considered that it would be highly beneficial for the talks between said entities to resume in due course, in order to reach substantive agreements on an encounter between the candidates that was so eagerly awaited by the citizenry, since this helped to ensure informed voting and increased the transparency of this election process.	It should be mentioned, however, that, even though the rival political groupings did resume their dialogue and outline possible tentative dates for holding such an encounter, that dialogue failed to bear fruit.

3. Assessment

A look at this electoral process as a whole, with particular attention to the recommendations made by the EOM/OAS and to the measures adopted in the mass media, shows that the context was not the most conducive to ensuring the transparency of the process. Although some matters were resolved as the elections progressed, those solutions were not implemented in a timely fashion, with the upshot that the public was left with the sensation that the presidential candidates did not have equitable access to the mass media, as shown by opinion polls conducted by the Citizens' Media Observation Group. Several other matters were never resolved, such as the anxiously awaited televised debate and the issue of pluralism in the mass media.

The above situation highlights the need in Peru for clearer regulation on the role and obligations of the mass media in an electoral process, and for formal bodies to supervise compliance with such agreements equipped, as in the case of this Observation Mission, with their own measurement mechanisms to enable them to observe the entire electoral process in an informed and objective manner.

Given the need for greater clarity in defining the limits on the powers, responsibilities and conditions that determine the type of relations that exist between broadcasters and the mass media in the transmission of programs that address political issues, particularly in the case of television, it might be beneficial to have an association that issues clear and firm standards in that respect, as well as supervising compliance with them, in order to avoid political interference and offer equal opportunities.

Accordingly, such an organization should act as an autonomous entity, independent of the Government and of political parties in general, and establish specific fora where the various mass media and political parties might meet and come to satisfactory agreements that help to ensure transparency in processes of this kind. In an ideal world it would be advisable for such agreements to be proposed as draft laws; however, if that were not possible, they could be implemented via administrative resolutions issued by Government or as voluntary agreements among the various players involved.

Among the issues that it would be advisable to address, this Observation Mission recommends:

1. Compulsory and free election slots

It would be advisable, starting 30 days prior to the elections, for all mass media, both state-owned and private, to implement such a time slot using a standard format and programming schedule. It is suggested that this not be left to the discretion of each media outlet, in order to avoid differences in type of coverage and to enable treatment of candidates to be as transparent and balanced as possible. This would also permit television viewers to recognize a more formal kind of programming.

As to format, we suggest not restricting this slot to speech-type formats that may only be recorded at television stations, but to afford candidates the possibility to fill the space with videos that they themselves have produced, enabling them to use formats with greater audience appeal.

As to scheduling, we propose that all networks adopt the same viewing schedules divided into two 15-minute segments targeting different audiences: during primetime and daytime viewing hours, which would prevent these slots from appearing at low audience times or being too long.

2. *Campaign advertising in the state and private media.*

It would be advisable if all the mass media clearly and transparently set out their campaign advertising broadcasting rates, viewing schedules, and restrictions on these spaces. Accordingly, it would be prudent to identify in advance the channels the media will use to publicize such information.

3. *State advertising*

We recommend suspension of all government advertising for the duration of the electoral campaign to avoid it being regarded as favoring a candidate's election chances.

4. *Political plurality in the mass media*

It would be advisable to establish certain basic criteria to ensure that the mass media maintained a pluralistic, transparent and even editorial balance without favoring one candidate over another. It is important during campaign periods for news media to devote spaces to the elections. In that context each network would be free to choose the basic operating criteria it sees fit, but should ensure evenhanded coverage of candidates on their respective campaigns, by allotting the same viewing time, treatment information objectively, and refraining from harassment or smear campaigns.

5. *Creation of other information spaces*

Though less of a priority it would also be desirable for the various media to examine the possibility of setting up other information spaces during electoral processes on this scale. These spaces could have two types of program contents:

- designed, on one hand, to enable voters to inform themselves about the government plans of each candidate, and
- on the other hand, to build up civic awareness in the electorate and provide greater information about the electoral process.

With respect to the first type of content, particularly in the television media, one possibility is to implement debate formats where candidates are given the opportunity to voice their points of view and have discuss issues with their rivals.

As regards the second type of content, also with television audiences in mind, it would be interesting to include short "micro slots," whose production and transmission would be financed by the state through the ONPE. These should consist of very simple audiovisual spots with high audience appeal to be transmitted in different segments throughout the day on all channels. These

slots should stress the importance of the fact that the citizenry, by voting in an informed manner, determines the fate of the country; explain how to cast a valid vote; tell the public where they can find out at which polling station they must vote (mentioning that this can change from one election to the next); inform them of their duties and responsibilities as voters, etc. These spaces could also include information slots for polling station officials.

VII. Electoral Complaints

1. Receipt and handling

Several complaints were lodged directly with the EOM by political groupings, private individuals, and civil society organizations. The EOM also received copies of other complaints filed with various authorities.

The main complaints fall into the following subject categories:

- Lack of impartiality in media coverage of the electoral process and access to the media by opposition candidates.
- Alleged forgery of signatures for registering the political grouping *Perú 2000*.
- Government pressure on the opposition through a number of its entities, such as state intelligence agencies and the Tax Authority, SUNAT.
- Use of state funds in the President's election campaign (subsidies program, Glass of Milk, community kitchens, National Food Assistance Program - PRONAA, etc.) and demands for suspension of his inauguration of public works.
- Lack of security in transportation of ballot returns to data-marshalling and -processing centers, particularly in remote areas.
- Inadequacies in and manipulation of voter information and training for pollworkers.

The EOM took receipt of the complaints and exercise special care in examining the alleged facts and claims they contained before referring them, if appropriate, to the competent authorities for processing.

Complaints were, in the main, brought directly to the attention of the Mission, either at its headquarters in Lima, or at its thirteen office set up around the country. These complaints were made to reach the Mission in a variety of ways:

- Written complaints sent to the offices of the EOM.
- Narrated verbally at the offices of the EOM.
- Telephone calls to the EOM.
- Copies of complaints filed with different Government agencies.
- Received directly by observers at observation sites.

Written complaints were conveyed directly to the EOM, both at its headquarters in Lima and to some of its regional offices. The claimants described alleged facts in support of their claims. The complaints either sought the intervention of the EOM or were intended simply to apprise them of situations the claimants regarded as irregular.

As to verbal complaints, these were collected at our offices, where claimants would come forward to report their concerns. The person in charge would make a note of the complaint and request some form of concrete proof with which to strengthen the basis thereof.

Several complaints were received by telephone. These were written down on a form and claimants were encouraged, if possible, to approach the offices of the EOM and to furnish evidence to support their accusation in order to make it more solid.

In some cases the Mission was also sent copies of complaints lodged with national authorities. The purpose of this was to inform the Mission of the complaint and, on a few occasions, to request its support in connection therewith.

On election day, observers received complaints at assigned observation sites, where they recorded the facts on forms specially designed for the occasion, a specimen of which is attached to this report. (Annex 6)

On several occasions public employees approached the Mission to report a number of irregularities that they had detected in the course of their duties. They asked that their identities be kept secret, for fear of reprisal by their superiors. The EOM recorded such accounts in writing and, naturally, respected the wish of the complainant to remain anonymous.

In the majority of cases no evidence was provided that made it possible to determine the veracity of the facts alleged in complaints, since, as mentioned at the beginning of this report, the general atmosphere was one of mistrust and fear. Furthermore, the EOM also considers that in many cases complaints were used as a political tool by the various movements taking part in the elections.

The EOM sought to respond to all complaints, and informed claimants either of the measures adopted in respect thereof, or where they should take up their accusations. The EOM referred these complaints to the competent agencies because it lacks authority to resolve such matters. Accordingly, it confined itself to monitoring their progress.

Annex 6 contains a chart containing the complaints received by the EOM during the electoral process.

During the second round of elections political parties and civil society remained polarized, while doubts continued to be raised in different sectors of society about the impartiality of the electoral agencies; these doubts grew as election day approached.

Individuals and bodies continued to approach the EOM/OAS to make all manner of accusations and complaints, either saying that their reason for doing so had to do with the international and independent nature of the Mission, or mentioning its "seriousness, impartiality, and status."

The Electoral Observation Mission continued to receive and classify accusations to determine their importance. Where necessary, the EOM requested claimants to provide further proof in order to refer accusations to the competent authority, and provided them with criteria designed to help make their task easier.

The manner in which these complaints were received was the same as in the first round, that is, directly by the Mission, either at its headquarters in Lima or at the offices set up around the country.

Furthermore, the coordinators at the various regional offices were requested, once installed, to request information from the Special Electoral Panels on complaints lodged with those agencies, in order to have a complete picture of the situation in that respect.

Requests were also put in with the authorities where specific complaints were referred to provide the EOM/OAS with information as regards their processing and status. Written replies were received from some authorities and claimants were advised accordingly.

2. Principal complaints

The complaints received by the Electoral Observation Mission may be categorized under the following issues, which were regarded by the EOM as the most far-reaching in the electoral process:

2.1. Alleged forgery of signatures for registering the political movement “*Frente Perú 2000*”, which supported the candidacy of President Fujimori

This irregularity was denounced by “*El Comercio*” newspaper on February 29, 2000. It implicated persons with political ties to the government. According to the complaint, the signatures of some one million citizens were allegedly forged to support the registration of the above-mentioned political grouping.

Since it was one of the four political groupings that originally formed an alliance to support the candidacy of the President Fujimori, sectors of the opposition immediately questioned the very validity of his candidacy, if the facts alleged in the complaint were found to be true. For that reason it was insisted that the matter be resolved swiftly.

As it was a criminal matter, the Attorney General’s Office intervened *sua sponte* and proceeded immediately to open an investigation led by ad hoc state prosecutor, Mirtha Trabucco, who quickly seized the lists of supporters of *Movimiento Independiente Perú 2000*, in both printed and magnetic form, without leaving any copies at the ONPE. The Attorney General’s Office instructed the police to investigate the case, with a view to preparing a report in 30 days.

The public scandal sparked by this complaint in the mass media was only just beginning when the EOM/OAS started its field activities in Lima (March 2), and it was persistently asked for its opinion on the matter. In statements to the press, the EOM, in response to the opinion of the President of the National Elections Panel, said that the case should be resolved by the justice administration in 10 days, not 30. It referred to the matter in writing in its very first bulletin (March 10) as follows:

“The EOM is concerned that although judicially the matter has been treated in accordance with the legal procedure provided under the Peruvian laws in force, inasmuch as it has been taken up by the Attorney General’s Office, the political signals projected by the handling of the case do not

offer clear indications of a desire for prompt and timely clarification of the matter. (EOM, Bulletin N° 1, p.3)”

Given that this was such a delicate and sensitive issue, in its information bulletins the EOM later stated that, in order to restore the credibility of the electoral organs and of the electoral process itself in the eyes of the citizenry, it was crucial, before holding the second round of elections, to come up with solutions, among other matters, in the criminal and administrative investigations into the accusation of the allegedly fraudulent registration of the aforesaid political grouping.

The deadline originally set by the Attorney General’s Office was twice extended, by 30 days on either occasion. However, to date, the outcome of the investigation remains unknown.

Public opinion was in favor of this list of supporters being made public, so that all the citizenry might undertake the necessary verification to determine whether their names and signatures were included, and a proper comparison be made

A record has been taken of statements and responses to inquiries by several persons, including the claimants. As of this drafting, the alleged responsible parties have still not been summoned to testify.

On Tuesday, May 16, the President of the National Elections Panel announced that he expected to have a report on the outcome of the administrative inquiry into this matter. That never occurred.

The matter had still not been successfully clarified even after the second round of elections. Rather, lawsuits were found to have been brought against the claimants.

2.2. Use of State funds and involvement of public official in election campaigns

This was one of the issues that received the most complaints during the electoral campaign, and was associated with the candidacy of the President. Such complaints were made in the mass media, and directly by members of the public, civic bodies, NGOs, in some cases by government officials, and by the EOM, whose observers saw this situation all over the country and on some occasions even obtained a photographic record of this irregularity.

Government officials were accused of taking advantage of various assistance programs implemented by the Government to coerce recipients, by threatening to cut their benefits, to attend rallies and meetings in support of a given candidate, more often than not the President. In these complaints specific mention was made of the practices of PRONAA officials. According to these complaints, said officials would hand out food to the public and at the same time distribute propaganda promoting the *Perú 2000* electoral alliance.

In some regions it was observed that supporters were driven to political rallies in automobiles and trucks belonging to the municipality. On some occasions the number plates were removed to make such mobilization more discreet.

Between December last year and January this year signs saying “*Perú 2000*” appeared in a military area along the south pan-American highway. Furthermore, soldiers of the 31st Infantry Division based in Huancayo erected and dismantled the stage at a rally held by *Perú 2000* in the City of Huananmarca.

It was found that a group of women from community kitchens and the “Glass of Milk” Program received household goods, stoves and, cooking pots in the Lima district of San Juan de Lurigancho in return for supporting the candidacy of President Fujimori. The gifts were given in exchange for tickets which were distributed among people who attended *Perú 2000* rallies.

Toward the end of February the leadership of community kitchens in Chorrillos, San Martín de Porres, and Callao complained that those food assistance centers had been turned into makeshift *Perú 2000* party offices, where mothers’ clubs received orders and instructions for recruiting local representatives and for carrying out political propaganda activities on behalf of the Head of the PRONAA.

Another complaint related to this issue concerned the hiring of ODPE coordinators in Trujillo for the second round of elections. According to the claimants, the head of the ODPE did not base these appointments on merits but on election criteria. The Mission, through its observers in the area, brought this complaint to the attention of the Special Electoral Panel but has yet to receive any reply.

Most of these complaints were dismissed by the authorities. In the case of those that were investigated, none yielded any results before the second round of voting.

According to Electoral Supervision Report No. 4 released by the Ombudsman’s Office in March 2000 (Annex 14), that institution had to intervene in several cases of use of public funds and involvement of public officials in election campaigning, both in Lima and in the country’s interior.

The aforementioned report lists the following cases: “5.1. Use of official vehicles, the presidential plane and the state-owned television network” in Cuzco, Cajamarca, Lima and Ayacucho; “5.2. Distribution of political propaganda during dissemination of information about public works” in the District of La Molina in Lima; “5.3. Use of outreach workers to collect signatures” in Huancavelica; “5.4. Continued existence of signs at public buildings and removal of posters of political groupings” in Ayacucho; “Exhortations by the prefect in favor of the reelection of the President” in Trujillo; “5.6. Political campaigning by mayors” in Lima, Maynas, Huancabamba, and Trujillo; “5.7. Distribution of political propaganda by public employees” in Piura and Huaráz; “5.8. Campaigning by public officials, congresspersons and ministers” in Ayacucho, Callao and Lima; and “5.9. Controversy surrounding the *Perú 2000* presidential candidate” in Lima and Arequipa.

2.3. Mass media

The EOM received an array of complaints and accusations concerning the mass media.

With respect to the tabloid press, there were accusations that they were waging a “war of dirty tricks” against the opposition, using front-page headlines to attack the reputations of candidates running against the President.

There were also accusations that opposition candidates were not being granted air time on public television networks and that the latter were charging high rates. The state television channel broadcast images of the President's election rallies while barely mentioning those of the opposition candidate.

In its statements, bulletins and meetings the EOM invited the mass media, in particular the public television networks, to increase their efforts to open up so that the citizenry might enjoy their inalienable right to know in depth the government plans of the candidates.

2.4. Harassment of the opposition

The EOM received complaints regarding harassment of persons opposed to the candidacy of the President by government agencies. Particular mention was made of the practices of the Tax Authority, SUNAT [*Superintendencia Nacional de Administration Tributaria*], which carried out inspection visits to examine the accounts and tax payments of these individuals. According to claimants these practices were selective.

On several occasions the EOM requested SUNAT for information about the cases mentioned in the complaints, to which the latter replied that this practice was one of their legally assigned functions and they explained the procedure followed in each case.

On many occasions the Mission heard complaints of infiltration by state security agencies of opposition rallies in order to verify the identities of participants. These agencies were also accused of harassment and even torture of journalists.

One case which the EOM mentioned in Information Bulletin No. 5, of April 5 this year, has to do with the closure of newspaper *Liberación*. Although, the closure of the enterprise originated from a civil suit, the affected parties considered they were being harassed because of their anti-government stance and that the measure violated their fundamental rights to freedom of expression and to work. In the aforementioned bulletin, the Mission stated that it viewed with concern the closing of a media outlet precisely as the electoral campaign was drawing to a close, even if it was the consequence of a civil suit for resolving a dispute involving private interests.

To date, a judicial proceeding has yet to be conducted and the newspaper remains in circulation.

Another case that should be mentioned because of its national implications has to do with the wresting of control of the television network *Red Global* and *Radio 1160* from Genaro Delgado Parker, which was achieved, according to the affected party, through reckless boardroom maneuvering, as a result of the independent, anti-government stance of these mass media outlets.

This case was taken up by the Inter-American Commission on Human Rights, which requested the Inter-American Court of Human Rights, under Article 63(2) of the American Convention on Human Rights, to adopt provisional measures on behalf of the affected parties, specifically: "...1) To order all the necessary measures to restore control of the television channel *Red Global* to Mr. Genaro Delgado Parker and his representatives; 2) To order adoption of all the necessary measures to restore to *Radiodifusora Marconi S.A. - Radio 1160* the transmitters and all other equipment needed for said radio station immediately to resume its regular broadcasting

activities; and 3) To inform the Honorable Court at the earliest convenience of concrete and effective measures adopted and, thereafter, to inform the Honorable Court every two months of the status of the provisional measures.”

The Mission met on several occasions with executives of these media outlets and in Bulletin No. 3 stated that it supported the application for precautionary measures presented by the Inter-American Commission on Human Rights (IACHR) on behalf of Mr. Genaro Delgado Parker, for which reason it viewed with concern the expiration of the time-limit granted to the Government of Peru for informing the IACHR on the adoption of the requested precautionary measures. By the same token, the EOM added that it trusted that the country’s authorities would comply in full with the requests of the above-mentioned Commission by returning to Mr. Delgado Parker control of the television channel *Red Global* and replacing the necessary equipment for *Radio 1160* immediately to resume its activities.

As yet, the Peruvian Government has not complied with the measures requested by the IACHR.

2.5. Irregularities at the ODPE in Chachapoyas

On April 9, Dr. Jenny Vargas, former Head of the ODPE at Chachapoyas appeared at the offices of the EOM to denounce an array of irregularities at her office relating to the distribution of election materials. Dr. Vargas explained that initially she had brought the situation to the attention of her immediate superiors at the ONPE in Lima and, in response, was made the object of visits and audits to investigate her work activities, to the point where she felt compelled to resign her post. The EOM referred the accusation to the National Elections Panel, and requested in Bulletin No. 10 that the competent agency report on the progress of that investigation. To date that request has gone unanswered.

2.6. Reduction in the congressional votes for *Movimiento Independiente Somos Peru*

On April 16, the National Elections Procedures Office (the ONPE), the agency charged, *inter alia*, with the following duties, “... to obtain the results of processes under its responsibility and to convey them to the Special Electoral Panels...” issued an official communiqué announcing the latest results at 99.972% of the tally of presidential and congressional votes from 88,787 polling stations. In that communiqué the congressional candidates of the political grouping *Movimiento Independiente Somos Peru* were recorded as having a total of 725,452 votes, a figure that entitled them to nine seats in the Congress. The communiqué also said that 4,000 votes for that political grouping had been challenged. Subsequently, on May 4, the National Elections Procedures Office issued a report saying that the tally of congressional votes was 99.99% consolidated. In that report *Movimiento Independiente Somos Peru*, inexplicably appeared with a total of 715,348 votes, a figure that gave it eight parliamentary seats. In light of that report the legal representative of that grouping filed a complaint with the National Elections Panel and sent a copy thereof to the Mission. Based on the foregoing the EOM requested information on this case from the ONPE and the National Elections Panel. To date no reply has been forthcoming on the matter.

2.7. Vote tampering by digitizers

El Comercio newspaper and civil society organizations denounced that six digitizers were caught altering preferential votes on behalf of two candidates to Congress. The President of the National Elections Panel said that he had received information from the ONPE and that he would immediately file a complaint with the Attorney General's Office.

In Bulletin No. 11 the Electoral Observation Mission said that it was crucial, in order for the ongoing electoral process to enjoy credibility in the eyes of the citizenry, that the competent authorities, before the second round of presidential elections, should provide conclusive results on concrete matters, including the present one.

3. Complaints collected by observers of the EOM/OAS on election day (April 9, 2000)

The following is a classification, arranged by subject, of the complaints received by observers of the Electoral Observation Mission of the Organization of American States in Peru on April 9:

- Barring of access to party representatives at polling centers
- Marked ballots
- Mutilated or defective ballots
- Closing of polling stations ahead of schedule
- Citizens who voted without being listed as qualified to do so, or despite being struck from the electoral roll.
- Delay in delivery of election materials to polling station officials
- Cancelled national identity documents
- Errors committed by ONPE coordinators and polling station officials due to lack of training
- Lack of information for voters at polling centers
- Absenteeism or lack of punctuality on the part of polling station officials
- Inclusion on the electoral roll of persons deceased or unqualified to vote
- Inconsistencies in the electoral roll
- Inconsistencies in accreditation of party representatives.
- Involvement of the police and the Armed Forces in electoral activities beyond their functions

- Incomplete election materials
- Polling stations not installed
- Political propaganda inside polling centers
- Similarity between the meal given by the ONPE to polling station officials and that given by the political grouping *Perú 2000* to its representatives
- Usurpation of identity

For further information, Annex 6 includes a chart that summarizes the complaints presented directly to this Electoral Observation Mission.

VIII. Assessment and Recommendations

1. Overview

After nearly three months of continuous work in Peru, the Electoral Observation Mission of the Organization of American States (EOM/OAS) issued its final assessment of the general elections, noting that “by international standards, the Peruvian election process falls far short of what could be called free and fair” (Bulletin No. 12). In fact, the EOM/OAS was unable on the basis of its observation to identify and confirm any substantive changes that might have overcome the problems recorded in the first round of elections, and which were duly reported in the Mission’s successive bulletins. The overall assessment points to persistent inadequacies, irregularities, inconsistencies, and inequities, leading the Mission to qualify the entire electoral process as irregular, to use one of the categories listed in the Manual for the Organization of Electoral Observation Missions issued by the General Secretariat of the Organization of American States.

From the beginning of its work, the EOM/OAS found that the election process has been suffering from a severe credibility crisis. The peculiarities, problems and anomalies that were observed and reported both domestically and internationally by various institutions, and the determination of the EOM/OAS to contribute constructively to the process, led the Mission to adopt an active observation stance that included a series of public statements on the results of its work.

In the pursuit of its mandate, the EOM/OAS adhered consistently to an active electoral observation agenda and followed up its findings by continuously making suggestions and proposing steps to improve some of the fundamental aspects of the electoral process where there were shortcomings, problems, or irregularities, so that the Peruvian people could decide their destiny freely through these elections.

Despite these persistent problems and irregularities, the EOM/OAS acted cautiously at all times to help preserve the viability of the vote, which was so earnestly desired by the citizens and by the candidates and their political supporters. As far as possible, it also avoided issuing any prejudgment of the elections, in the expectation that steps would be taken to improve the situation, such as postponing the second round of the presidential vote. This possibility was seriously considered by all political sectors and, had it happened, it would have done much to give the process a minimum credibility, to restore public confidence in the process and to forestall a sense of fatalism that seemed to have taken possession of a large part of the electorate and which was expressed by the general perception that, whatever the outcome, it would inevitably be fraudulent.

Unfortunately, certain guarantees that the EOM/OAS attempted to encourage within the Peruvian electoral institutions were ignored or minimized.

Despite the foregoing, the EOM/OAS was fully aware, from the beginning of its activities, that it was up to the National Elections Panel to oversee the legality of the election process, and for this reason it confined its activities to actions and procedures to monitor closely each stage of the election process. Its principal objective was to verify that the process complied with certain rules and standards of legitimacy and transparency. Consistent with its mandate, the EOM/OAS was mindful that its activities must not attempt to substitute for any of the players in the election process and that the only body qualified to assess the legality of that process is the National Elections Panel. As a

result, the final responsibility for conduct of the electoral process falls upon the institutions, the parties, and the political groupings in contention.

2. Problems detected and tasks accomplished

As part of its work of observing and monitoring those issues directly linked to the electoral process, and within the conflictive context of polarization and loss of confidence in the process and in the responsible institutions, the EOM set out to identify major issues where some distinctive changes could be made that might help to reestablish voter confidence.

The EOM/OAS identified two broad sets of issues that impacted negatively on the election process. First, there was a historical record of eight years in which it was unrealistic to expect any short-term change. But there was a second set of issues related immediately to the present electoral process, where the government and the electoral agencies were indeed in a position to give concrete signals that might have restored the serious loss of public confidence in the elections.

1. On the first point, the EOM/OAS took note of legislative and institutional changes made during the last eight years that were sharply criticized by the opposition. These fell under two broad areas that affected the legitimacy and credibility of the process:
 - A. The candidacy of President Fujimori for a third term and the legislative and institutional amendments carried out during those eight years that made this possible, including the stripping of the Constitutional Tribunal's powers by Congress.
 - B. The presumed control of the Executive over the other branches of government, in particular its intervention in the Judiciary, in the Attorney General's Office and in the subsequent appointment of judges and officials to electoral bodies, thereby compromising the independence of the system of justice and the electoral system.
2. On the second point, the EOM/OAS focused its attention on issues that were immediate and central to this election campaign, and on the preparations for the election, in which the government and the responsible electoral bodies were in a position to rectify certain features. These issues were reiterated in the EOM/OAS bulletins, and centered on:
 - Improving procedures for handling and counting votes (in which the OAS mission worked intensively with its own technical advisors, with representatives of the political parties and with experts from the elections body).
 - Voter information and training for pollworkers, which was very unsatisfactory during the first round and was one of the causes of the enormous delays in the arrival of the statements of poll at the vote-tallying centers.
 - Better election management, to ensure that the process was properly organized, particularly with respect to the distribution of voting materials and the collection of the statements of poll issued by each polling station. (It is worth recalling that, according to the laws of Peru, ballot papers are physically destroyed at each polling station, once the

corresponding return has been prepared. As of that moment, the only possible future official reference material is the statement of poll).

- Equitable access for candidates to the mass media, particularly public television networks, so that voters could have access to the full range of candidates standing for election. (In this connection, the EOM monitored the television and the press, the results of which are appended hereto as Annex 4).
- The use of public funds in support of official candidates. Although this is clearly prohibited by Peruvian legislation, according to the Ombudsman's reports, this was a general practice throughout the country.
- The harassment of opposition candidates.
- Concrete signs of a willingness to clarify the alleged mass forgery of signatures (amounting to one million, according to the complaint) for registering one of the political movements supporting the reelection of President Fujimori. This latter point posed a particularly serious problem for the EOM/OAS, since it not only undermined the credibility of the body responsible for holding the elections but it also raised questions about the fairness and transparency of the entire election system.

In other words, this OAS mission stressed issues where it considered it indispensable that the government and the responsible electoral institutions should give clear and convincing signals to restore public confidence and establish a minimum degree of credibility for the elections. Nevertheless, although the citizenry and the political parties saw very clearly that these were reasonable demands that the responsible institutions were quite able to address, the signals were tardy and grudging and in some cases nonexistent.

In addition, serious problems were found with the vote-counting software, which were duly reported. Only hours before the vote, there were still serious irregularities in the software and this almost undermined the holding of the first round of the elections.

With respect to these issues, the EOM/OAS declared its willingness to establish mechanisms that would help the electoral authorities to overcome the problems noted above. The EOM/OAS explained that, in its status as an observer mission, it would not be undertaking any activities that might more properly be regarded as technical assistance, and it insisted that it was the Peruvian authorities who, within their areas of responsibility, must establish mechanisms for overcoming the weaknesses in the electoral process which came to light during the first round and recurred in the second round.

As a result of the foregoing, and of negotiations involving the principal players in the electoral process, a proposal by EOM/OAS was accepted to establish a system of intermediation whereby the Ombudsman would channel the observations and suggestions of the Mission itself and those of other entities, such as the contending political parties, to the electoral agencies.

Through a decision of the body responsible for organizing the election, the National Elections Procedures Office (the ONPE), it was agreed to establish three working groups to deal with training of pollworkers, electoral management, and the vote-tallying system, with a view to proposing

recommendations to the head of the ONPE for ensuring optimal organization of the second round of the presidential election.

3. Conclusions

By May 15, upon expiry of the ONPE's self-imposed time limit for implementing recommendations submitted by the working groups (which were composed of representatives of the two political parties participating in the second presidential round, of the ONPE itself and the Ombudsman's Office, with observers from the EOM/OAS), it was clear from the ONPE's own reports that progress in these areas was inadequate, and that it would be impossible, given the short time remaining before the second presidential round, to achieve the proposed goals and therefore to guarantee elections would not raise public doubts about their technical preparation and the integrity of the vote.

Under these circumstances, the EOM's principal concern related to the election timetable: the amount of time considered necessary to implement the improvements and corrections proposed by the working groups for the second electoral round was not consistent with the date set by the National Elections Panel, i.e. May 28, and although there had been progress on some issues, the timing of the second round imposed extremely short deadlines within which it would be impossible to implement and verify measures to improve some of the critical conditions identified, and to have them fully verified by players in the process:

- There was not enough time to test and verify the vote-tallying software with respect to data transmission, security aspects and monitoring by representatives and observers. The foregoing was not possible because a final unalterable copy of the software was never made available, in either round, during which different software was used. The ONPE itself made it impossible to carry out the audit that it had itself requested in February. In normal circumstances this verification would not have been necessary, but it became essential in the prevailing climate of suspicion and mistrust.
- There was not enough time for the instructors trained by the ONPE to provide the required training to the more than 520,000 polling station officials and alternates, for more than 87,000 polling stations throughout the country.
- While preparations for the second round were underway, important elements of the first round were not clarified or satisfactorily explained; these included almost one million four hundred thousand votes more than the number of persons who voted (about eleven million), a total absence of information on the status of challenges to results of the congressional vote, and the failure to announce the results of this vote. Given the history of huge changes in the congressional results of past elections, this point was also critical.

Consequently, the EOM/OAS concluded that there were glaring shortcomings remaining from the first round of these general elections which compromised the holding of the second presidential round. As the EOM/OAS noted at the time, these shortcomings related to electoral logistics (problems, delays, and unexplained silences during the first round of elections); the vote-tallying system (instability and problems in the preferential vote for Congress, for which the ONPE offered no convincing explanation, and a lack of familiarity with the new voting software, which was

delivered to the mission, and in an incomplete form, only three days before the vote); the lack of training for pollworkers noted in the first round persisted into the second; the lack of equal access for candidates to the mass media; the use of public funds for campaign purposes; and the handling of complaints submitted to the electoral and judicial authorities, which cast doubt on the credibility of the body responsible for the elections, the National Elections Procedures Office (the ONPE), and on the National Elections Panel as the oversight body. It was in light of the foregoing concerns, shared with other international and domestic observer bodies and by major organizations and sectors of Peruvian society, that the EOM/OAS insisted until the last moment that the contending political forces and the election authorities should jointly seek a political and legal solution to introduce flexibility into the voting calendar so that the election date could be postponed.

A longer period of time was sought in order to complete efforts to correct the problems encountered in the first, highly controversial round of voting, so as to improve conditions for the second round and provide stronger grounds for confidence in its outcome. In immediate terms, allowing more time would have made it possible to confirm that the results of the computer simulation conducted satisfactorily by the ONPE on May 25, two days before the election, were not an isolated case but that, at least in strictly electoral terms, constituted a basis on which it would have been possible to undertake and complete efforts to resolve the shortcomings in the electoral organization that were noted throughout the process. The EOM is convinced that postponement would have allowed the minimum time necessary to make substantive improvements in the organization of the elections and the training of polling station officials, and to perform a minimal functional examination of the vote-tallying system.²

The EOM/OAS recognizes that in the last hours before issuing its final assessment of the Peruvian electoral process, there were intensive negotiations over the possibility of extending the time limit for the second round, without violating constitutional provisions. The EOM/OAS regrets that these efforts failed at such a critical moment. These negotiations were opened by the executive branch on Tuesday, May 23, and a proposal to postpone the elections by a few days was put directly to the Secretary General, Dr. César Gaviria. From that point forward the Government of Peru ceased all direct communication with the Chief of the EOM in Lima and all communications thereafter were conducted through the Secretary General in Washington.

The Government, through the National Elections Panel, without offering any explanation to the Secretary General, announced publicly in the afternoon of Thursday, May 25, that it was dismissing all petitions for postponement lodged with it and reaffirmed May 28 as the date of the polls. The EOM/OAS regrets that these efforts to arrange a possible postponement failed at such a critical moment.

² In the Executive Summary of the Final Report of the Chief of the EOM/OAS, distributed in June of this year at the OAS General Assembly in Windsor, Canada, the EOM stressed a concern that as of the date of that report the final results of the congressional elections had not been announced and the public was unaware of the status of challenges brought before the National Elections Panel.

This Mission is fully aware of the differences between the presidential and the congressional elections, in terms of their purpose, the players involved, and the results, but they cannot be treated separately as if they were completely independent processes that merely happen to coincide in their timing and procedure. Both elections were part of the same political process and they suffered from the same difficulties and the same doubts.

4. Recommendations

The time available during its observer work did not allow the Mission to go further into recommendations concerning the legal framework governing election procedures in Peru, which will undoubtedly be the subject of analysis and debate by political parties and government and parliamentary authorities after this process is completed.

Nevertheless, the EOM/OAS noted the concern of many public and private institutions and distinguished citizens of the country in the sense that there is an urgent need to re-establish the full independence of the branches of government, particularly the judicial branch and the Attorney General's Office, as well as institutions that are fundamental to reinforcing the rule of law, such as the Constitutional Tribunal and the National Council of Magistrates.

Strengthening these bodies, and improving the regulations governing access for different political viewpoints to the mass media during election campaigns, are essential to strengthening the country's democratic system. The main issues addressed in the bulletins released by the EOM throughout the entire process may contain useful ingredients for constructive exploration of ways to improve structures and procedures needed to help both strengthen democracy in Peru, and pave the way for a more transparent electoral process.

ANEXOS

(En hard copy.)