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# EUDO CITIZENSHIP OBSERVATORY

## *ACCESS TO ELECTORAL RIGHTS*

### *PERU*

Roger Merino Acuña

Avril 2015



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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

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# Access to Electoral Rights

## Peru

**Roger Merino Acuña<sup>(\*)</sup>**

### 1. Introduction

According to the Peruvian Political Constitution, Peru is a social, democratic, independent and sovereign republic. In addition, the Constitution establishes that the Peruvian state is non-divisible and its government is unitarian, representative, decentralised, and organised according to the principle of separation of powers.<sup>1</sup>

The government of Peru is ruled by a presidential representative and multi-party system. This means that, under the current constitutional framework, the President of the Republic is the head of state and government, while legislative proposals may be promoted by either the executive or the legislative branch and become laws once they have been approved by the Congress and enacted by the President. The positions of the President and the Congress representatives are subjected to national elections, whereas the designation of the Prime Minister and the other ministers depends upon the decision of the President of the Republic. The judiciary is independent and the position of the President of the Judiciary and other positions depend upon internal elections within this branch. There are no popular elections of judges.

In Peru political elections are held periodically at national, regional, or local levels. National elections include the election of the President of the Republic, the Vice-President of the Republic, congressional representatives and a national referendum. Regional elections include the election of the President of the Regional Government, representatives of the Regional Council and regional referenda. Local elections comprise the election of the mayor of a municipality, representatives for the local council, and the local referendum.

For electoral purposes, the territory of the Republic of Peru is divided into 26 Electoral Districts that comprise the 24 regional governments, the capital of the Republic (Lima), and the Constitutional Province of Callao. The elections can take place a “unique electoral district” if it counts the votes of all citizens irrespective of their territorial residency and a “multiple electoral district” if the votes are circumscribed to the territorial residency of the citizens. The National Elections Jury

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(\*) Ph.D. Social and Policy Sciences, University of Bath (UK); M.Sc. Comparative Law and Economics, IUC of Turin; M.Sc. International Policy, University of Bath (UK); LL.M. Civil and Commercial Law, San Marcos National University (Peru).

<sup>1</sup> Political Constitution of Peru, art. 43.

assigns to each electoral district a specific number of seats in Congress in proportion to the number of voters that exist in each district. Peruvian voters with residency in other countries are considered within the Electoral District of Lima.

The national elections of the President of the Republic and congressional representatives are known as “general elections” and take place every five years. The President is elected in a Unique Electoral District and requires more than half of the eligible votes to be elected (excluding null or white votes<sup>2</sup>). If the votes in favour of one candidate do not reach more than half of the total, a second round between the two candidates that obtained the highest number of votes, must be organised within 30 days following the first election. It is important to mention that under the current constitutional framework, the President of the Republic cannot run as a candidate for an immediate re-election. He or she must drop out for at least one presidential term before running as a candidate.<sup>3</sup> In a recent constitutional reform,<sup>4</sup> Congress approved the same restriction for the Regional President and Mayors. Congressional representatives have the right to run for re-election.

Regarding the general right to vote and be elected in Peru, all Peruvian citizens have the right to vote in national elections, whether they reside in Peru or abroad. However, to be elected, the candidate must have residency in Peru. For regional elections, only Peruvian citizens with residency in Peru have the right to vote and be elected. For local elections, foreign citizens with residency in Peru have the right to vote and be elected under certain conditions (see section 3).

Political organisations can be represented by a parliamentary group in Congress if they obtain at least six representatives in Congress in more than one electoral district or at least 5 per cent of the valid votes at national level. This is known as the '*valla electoral*' or electoral threshold. As congressional elections correspond to the system of multiple electoral districts, Peruvian legislation has established the proportional system for the distribution of seats in Congress, and it applies the mathematical method of the '*cifra repartidora*', which is a variant of the D'Hondt method.<sup>5</sup>

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<sup>2</sup> Null votes or 'flawed votes' are those that cannot be attributed to a specific candidate because the election form has been spoiled. Spoiling might occur because the pencil marks comprise more than one option or do not mark any option at all but other parts of the form. White votes are those that do not bear any pencil mark on the election form.

<sup>3</sup> The Law of Constitutional Reform, Law 27865, enacted in November 2000, modified art. 111 of the Political Constitution establishes that immediate presidential re-election is forbidden. This reform responded to the democratic turn in Peru following the authoritarian regime of ex-resident Alberto Fujimori (1990-2000), who tried to be re-elected indefinitely through fraudulent elections. The Fujimori form of government has been called 'Competitive Authoritarianism' (Levitsky, Steven, Way, Lucan, 2002. The rise of competitive authoritarianism. *Journal of Democracy*, Volume 13, Number 2, April 2002, pp. 51-65).

<sup>4</sup> Law of Constitutional Reform of 6 March 2015.

<sup>5</sup> In Peru, the election of congress representatives is proportional. According to this system, political organisations must present a complete, closed and non-rigid list. The list is closed because it is not possible to introduce candidates other than those elected by the political organisation. The list is non-rigid because the so-called 'preferential vote' is allowed, so that citizens can modify the order of candidates on the list presented by the political party. If nobody makes use of the preferential vote, the order established in the list presented by the party prevails. Therefore, the percentage of the votes determines the quantity of representatives that obtain a seat in Congress for each list and the preferential vote determines the order in which they are elected. With the aim of defining the proportional division, the "*cifra repartidora*" method is applied. This mathematical method consists in taking all the electoral results in a

## 2. Historical Background

In Peru franchise was a general right during the nineteenth century, but under certain conditions, that is, literacy, property-ownership, and solvency. The Constitution of 1856 extended this right to those who had served in the Army (art. 37).<sup>6</sup>

The Law of 1834 introduced the condition that the voter had to be a taxpayer (art. 5.3), a stipulation reiterated in the constitutions of 1860 (art. 38) and 1939 (art. 8.3). The Law of 12 November 1895 modified the Constitution of 1860 and established that only literate citizens had the franchise (art. 38); this norm being reproduced in the constitutions of 1920 (art. 66) and 1933 (art. 86). This innovation reduced drastically the electoral body and popular participation. Thus, although illiteracy had been considerably reduced, in 1963 only half of the population of voting age had the right to vote. In reality, illiterate people, the majority of them indigenous, were denied the right to vote.<sup>7</sup>

As for female suffrage, the Constitution of 1933 (art. 86) recognised women's right to vote but in a very restrictive way. They had to be literate, at least 21 years of age, be married or a mother, and could vote only in municipal elections. The right to vote in general elections was reserved to male citizens until 7 September 1955, when it was extended to women (Law 12391).<sup>8</sup>

Formally, the 1979 Constitution fully recognised the right to vote and stand as a candidate to all citizens without literacy or income conditions. Thus, indigenous peoples were able to participate in electoral processes, the only requirement being that they should be at least eighteen years of age. However, barriers still exist because many indigenous people are undocumented, the electoral centres are far from their communities, and they are still excluded from elite discourses.<sup>9</sup>

In that context, the current special quota for the political participation of indigenous peoples and women (Law of Regional Elections – Law 29047 and Law of Municipal Elections – Law 28869) have become in many cases a mere formality of political parties rather than being a guarantee of democratic and plural political participation.

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specific electoral district and dividing them using a numerical series. The resulting ratios are used to allocate seats. In Peru this method has been used since 1963.

<sup>6</sup> Paniagua, Valentín, 2003. *El derecho de sufragio en el Perú*, Elecciones (Revista de la ONPE), n. 0 2, Lima.

<sup>7</sup> Paniagua, Valentín, op. cit., p. 70.

<sup>8</sup> Paniagua, Valentín, op. cit., p. 68.

<sup>9</sup> Salmón, Elizabeth, 2011. Entre las promesas de consulta previa y la continuidad de la protesta social: las ambigüedades de la participación política indígena en el Perú. In: *Participación Política Indígena y Políticas Públicas para Pueblos Indígenas en América Latina*. Lima: Konrad Adenauer, p. 280.

### 3. Eligibility: Who has electoral rights under national law?

In Peruvian national elections all nationals have the right and duty to vote according to the Political Constitution and the Organic Law of Elections – Law 26859. Voting is a right and a duty because in all elections (national, regional, and local), it is compulsory under the imposition of a fine.<sup>10</sup> However, there are some exceptions to the right to vote and be elected. For example, members of the armed forces and the national police have no right to vote and be elected<sup>11</sup>, although currently there are some law projects in Congress that propose changing this regulation in order to allow them to exercise these rights. Another exception concerns citizens who are more than 70 years of age for whom voting is facultative.<sup>12</sup>

For Peruvian residents, the only requirement to vote is to be over eighteen years of age<sup>13</sup> and be registered in the National Registry of Identification and Civil Status (RENIEC). It is important to note that almost all Peruvians are registered in the RENIEC. This institution has provided national identification documents to 95.4 per cent of the population and the aim of its National Plan 'Peru against un-documentation 2011-2015' is to provide identification documents to one hundred per cent of the population. For Peruvian citizens who do not reside in Peru, there are other specific requirements to vote (see details in section 2.2).

Regarding the right to be elected, Peruvian citizens who reside in the country hold this right in national, regional, and local elections. Foreign citizens with residency in Peru also have the right to be elected but only in local elections provided that they fulfil specific requirements (see details in section 3.3).

Voting is free, personal, equal, and secret. Freedom of voting means that nobody is obliged to vote in one way or another. Voting is personal and secret because all citizens have the right to maintain in secret their political options. Voting is equal because all votes have the same value no matter whether they are exercised by women, sexual minorities, or indigenous peoples. The only requirement is to show the National Document of Identification provided by the National Registry of Identification and Civil Status.<sup>14</sup>

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<sup>10</sup> Art. 31 of the Peruvian Constitution establishes that 'voting is personal, equal, free, secret and compulsory until seventy years old. It is facultative after that age'.

<sup>11</sup> Organic Law of Elections – Law 26859, art. 11.

<sup>12</sup> Organic Law of Elections – Law 26859, art. 9.

<sup>13</sup> According to the Peruvian legal system all persons acquire complete legal capacity to exert civil and political rights when they reach eighteen years of age.

<sup>14</sup> Organic Law of Elections – Law 26859, art. 7.

### 3.1. Citizen residents

#### *Age thresholds*

The general age threshold for voting is eighteen years. The Political Constitution establishes that all persons older than eighteen years are considered as citizens with political rights and electoral inscription is a requirement for the exercise of citizenship.<sup>15</sup> This inscription refers to registration in the National Registry of Identification and Civil Status in order to obtain the National Document of Identification.

To run as a candidate, the age threshold varies according to the public position in competition: To run for the Presidency of the Republic, the threshold is over 35 years of age; 25 years of age for Members of the Congress and Regional Presidency, and eighteen years of age for mayors and local and regional councillors.

#### *Persons with a mental disability*

Persons with mental disabilities have the right to vote and be elected in Peru unless they are proclaimed by a judge with a judicial resolution as fully incapacitated (*incapaz absoluto*). Art. 581 of the Civil Code regulates the conditions to be declared as absolutely incapable and arts. 581 – 584 of the Civil Procedural Code regulate the judicial procedure that must be followed for this declaration. It is important to mention that a 'fully incapacitated' person loses the possibility to exercise civil and political rights.

#### *Persons convicted for criminal offence*

Persons convicted for criminal offences and punishable with imprisonment are disenfranchised, but those whose offences do not entail imprisonment maintain their electoral rights. The franchise may also be suspended as a result of a specific judicial decision of disqualification of political rights. It is a sanction delivered by a judge for committing specific crimes.<sup>16</sup>

In Peru, many people are imprisoned without having a final judicial decision or on remand (*prisión preventiva*). According to the Procedural Criminal Code,<sup>17</sup> a judge can order preventive prison under three conditions which must be met cumulatively: 1) the existence of strong elements of conviction to reasonably estimate that the accused committed the crime; 2) the sanction to be imposed is more than four years of prison, and 3) owing to his or her antecedents and other circumstances of the particular case, the accused can attempt to elude the action of justice (risk of escape), or to impede the investigation (risk of impediment). In Peru the high number of prisoners in jail with no final judicial decision constitute a significant public problem. Although their number has diminished in recent years, they still represent over 60 per cent of the total number of imprisonments.

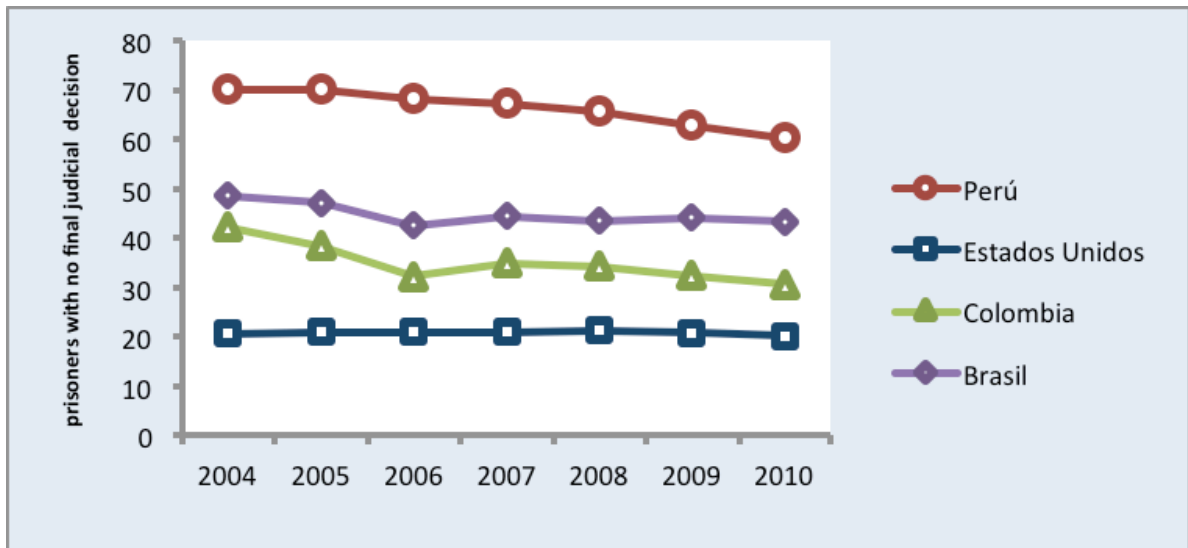
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<sup>15</sup> Political Constitution, at. 30.

<sup>16</sup> Criminal Code, art. 36.3.

<sup>17</sup> Procedural Criminal Code, art. 268.



**Figure 1: Prisoners with no final judicial decision**

Source: Observatory of Citizen Security of OAS

Therefore, prisoners with no final judicial decision retain their electoral rights in theory, although in practice it is almost impossible to exercise the right to vote and be elected. In addition, if they are elected, the exercise of the public position would remain suspended until the end of the remand or the enactment of the final judicial decision, which can confirm that the accused is guilty (the accused become a convict with no political rights and no possibility of taking up a public position), or can assert that the accused is innocent (so he or she can take up the public position).

### **The case of the election of Regional President Gregorio Santos**

Recently, the current Regional President of Cajamarca, Gregorio Santos, was re-elected while detained and awaiting trial for corruption. He gained popularity in Cajamarca because of his opposition to mining companies and their negative environmental impact. However, he has been accused with corruption in the management of public funding in the regional government. A judicial decision ordered preventive prison for eighteen months in a maximum security jail in Lima, where he persisted in accusing the national government of collusion with mining companies. At that time Santos had already begun his campaign for re-election and he subsequently won the election while in prison with 44% of the total vote. Although he appealed the judicial decision ordering preventive prison, the second judicial instance confirmed the decision. He will be free in August 2015 after eighteen months' incarceration, although this will not mean that he will become Regional President.

The new Regional Council took up office on the 1 January and was granted a 120 day license only (until May 2015).] After that date, the presidential vacancy will be declared and the position will be offered to the Vice-President. In a similar way, if Santos is found guilty by court decision, the regional presidency will automatically be taken up by the Vice-President. This case shows the necessity for a legal clarification of the electoral rights of prisoners on remand.

### **3.2. Citizens abroad**

Peruvian citizens who are temporarily absent or who reside permanently abroad have the right to vote in general elections and national popular consultations. To exercise this right, they first have to be registered in the National Registry of Identification and Civil Status<sup>18</sup> and then registered in the Consulate of their country of residence.

It is important to emphasise that Peruvian citizens who are abroad on election day can vote only in national elections. They have no right to vote in regional and local elections and they have no right to be elected in any type of election. This qualification restricts the political participation of Peruvian citizens abroad. It is estimated that there are 3.5 million Peruvians living abroad, which represents more than 10 per cent of the total population.<sup>19</sup> However, these Peruvians have to no right to be elected. This is very problematic, taking into account that International Law poses provisions to recognise such rights, for example in the International Convention on the Protection of the Rights of all Migrant Workers and their Families of 1990 (art. 41<sup>20</sup>), ratified by Peru. Owing to

<sup>18</sup> Organic Law of Elections, Art. 224.

<sup>19</sup> Sánchez, A. 2012. *Perfil Migratorio del Perú 2012*, Organización Internacional para las Migraciones. Lima.

<sup>20</sup> Art. 41

*1. Migrant workers and members of their families shall have the right to participate in public affairs of their state of origin and to vote and be elected in elections of that state in accordance with its legislation.*  
*2. The states concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.*

this situation, the Peruvian Ombudsman<sup>21</sup> recommended that the government fortify the mechanisms of political participation of immigrants in several organisations (e.g. consultation councils, associations, networks of immigrants) in order to strengthen the connection of Peruvian migrants with the state, and to facilitate the detection of possible human rights violations abroad.

Peruvian citizens who reside abroad cast their vote on the same day as the domestic electorate.<sup>22</sup> The type of voter registration is 'active' because non-resident citizens can vote only if they are registered in the Peruvian consulate. These voters are included and their votes counted in the electoral district of Lima<sup>23</sup>; a mechanism referred to as 'assimilated representation'. Once the consulate collects all the votes, the ballots are incorporated into the broader national count.

The vote is exercised in the premises of the consular office of Peru in the country of residence or in the place where the consular official establishes a voting booth in case the consular office has insufficient space.<sup>24</sup>

### 3.3. Electoral rights for non-national residents

Art. 5.9 of the 'Regulation for the inscription of the list of candidates for municipal elections' defines foreign people in Peru as those residents who are neither Peruvian by birth, nor naturalised or by option according to the Constitution, international treaties signed by the state, and the Law of Nationality.<sup>25</sup>

Non-Peruvian citizens who are residents in Peru have the right to vote and be elected only in local elections. They must meet certain conditions,<sup>26</sup> that is, to be more than eighteen years of age and to be able to document two continuous years of residence before the election. In addition, they have to be registered at the Registry of Foreign Residents in Peru for Municipal Elections. Registration is voluntary and personal and it does not concede Peruvian citizenship nor have any implications for the naturalisation procedure. It only allows the delivery of the Electoral Accreditation Document (*Documento de Acreditación Electoral*) by RENIEC. This document allows foreign residents to exercise the right to vote and be elected in municipal elections and implies the same electoral duties as for Peruvian citizens.<sup>27</sup>

In addition to the Electoral Accreditation Document, in order to exercise the right to vote, foreign residents must show their foreign identification document (*carnet de extranjería*). For electoral purposes, this document is the equivalent of the national document of identification. In order to exercise the right to stand as candidate, non-nationals must prove that they have maintained two years of uninterrupted residency

<sup>21</sup> Defensoría del Pueblo, 2009. Informe Defensorial 146: *Migraciones y Derechos Humanos. Supervisión de las políticas de protección de los derechos de los peruanos migrantes*. Lima.

<sup>22</sup> Organic Law of Elections, art. 225.

<sup>23</sup> Organic Law of Elections, art. 21.

<sup>24</sup> Organic Law of Elections, art. 226.

<sup>25</sup> 'Nationality by option' refers to three cases regulated in the Law of Nationality – Law 26574: 1. Those who were born abroad but have been residing in Peru since the age of five and upon achieving the majority of age can acquire nationality with a declaration. 2. A foreign national who marries a resident Peruvian and lives in Peru for two years. 3. Those born abroad and whose parents are Peruvian.

<sup>26</sup> Municipal Elections Law, Art. 7.

<sup>27</sup> Regulation of the inscription of the list of candidates for municipal elections, art. 46.

prior to the date of the municipal election in the district or province where they intend to vote and/or stand as candidate.

Thus, non- Peruvian residents are generally enfranchised for local elections with the exception of frontier municipalities<sup>28</sup> where they are not allowed to vote or run as candidates for elections. Moreover, in the case of regional elections only Peruvians by birth can be candidates and not those Peruvians who became nationals by option or naturalisation (art. 13.1 Law of Regional Elections). These restrictive rules are related to the constitutional proscription of foreigners to acquire property or concession rights within 50 kilometres of the frontiers (art. 71 of the Political Constitution). Explanation of these provisions is found in the Peruvian history of border conflicts. Peru has endured border conflicts and wars with almost all its neighbour countries until recent years<sup>29</sup> and those norms are based upon the allegation of national security.

### 3.4. Indigenous peoples

As explained above, in Peru the franchise was a general right during the nineteenth and first half of the twentieth centuries, but under certain conditions. The Constitution of 1979 fully granted the franchise to all citizens without these restrictive requirements, inaugurating full legal recognition of indigenous political rights.

The right of political participation by indigenous peoples is developed in the Law of Municipal Elections (Law 26864 of 1997) and the Law of Regional Elections (Law 27683 of 2002). Both laws establish that the list of candidates of each region and province have to amount to a minimum of 15 per cent of representatives of native communities and indigenous peoples (the so-called 'native quota' or *cuota nativa*) as the requirement for registration in municipal and regional elections.<sup>30</sup> Art. 21 of the Regulation of the Registry of Candidate Lists for Municipal and Regional Elections (Resolution N° 247-2010-JNE) reiterates the so-called 'native quota'.<sup>31</sup>

<sup>28</sup> Municipal Elections Law, Art. 7.

<sup>29</sup> The last conflict was the Cenepa War. This was a short military conflict between Ecuador and Peru (January 26 – February 28, 1995) over Amazonian territory. The conflict resulted in diplomatic negotiations that led to the signing of the Brasilia Presidential Act as a peace agreement on 26 October 1998 and the formal demarcation of the border on 13 May 1999.

<sup>30</sup> Law of Municipal Elections. *Artículo 10.- 'Inscripción de listas de candidatos [...] La lista de candidatos se presenta en un solo documento y debe contener: [...] 3. El número correlativo que indique la posición de los candidatos a regidores en la lista, que debe estar conformada por no menos de un treinta por ciento (30%) de hombres o mujeres, no menos del veinte por ciento (20%) de ciudadanos o ciudadanas jóvenes menores de veintinueve (29) años de edad y un mínimo de quince por ciento (15%) de representantes de Comunidades nativas y pueblos originarios de cada provincia correspondiente, donde existan, conforme lo determine el Jurado Nacional de Elecciones.'*

Law of Regional Elections. *Artículo 12.- 'Inscripción de listas de candidatos [...] La relación de candidatos titulares considera los siguientes requisitos: [...] 3. Un mínimo de quince por ciento (15%) de representantes de comunidades nativas y pueblos originarios en cada región donde existen, conforme lo determine el Jurado Nacional de Elecciones (JNE).'*

<sup>31</sup> *Art. 21.- Cuota de Comunidades Nativas, Campesinas y Pueblos Originarios '21.1 Por lo menos el quince por ciento (15%) de la lista de candidatos a regidores provinciales debe estar integrado por representantes de comunidades nativas y pueblos originarios ubicados en la provincia correspondiente. 21.2 Por lo menos el quince por ciento (15%) de la lista de candidatos a consejeros regionales debe estar integrado por representantes de comunidades nativas y pueblos originarios ubicados en el departamento correspondiente, conforme a lo dispuesto por el JNE. [...]'.*

Through Resolution N° 248-2010-JNE, the National Elections Jury analysed the fulfilment of the 'native quota' in the list of candidates to regional councils and reconstituted the number of regional councillors (*consejeros*) of eleven regional governments that, according to the National Registry of Identity and Civil Status (RENIEC), contain native communities and indigenous peoples (Amazonas, Ayacucho, Cajamarca, Cusco, Huánuco, Junín, Loreto, Madre de Dios, Pasco, San Martín, and Ucayali). Then, through Resolution N° 370-2010-JNE the Jury established that the term 'native quota' includes not only native communities and indigenous peoples but also peasant communities.

Regarding the election and accreditation of candidates under the 'native quota', the Regulation of the Registry of Candidate Lists for Municipal and Regional Elections establishes that this must be defined for the chief or representative of the native community in a written document or through a presentation to a local judge (*Juez de Paz*), who must issue a formal declaration. This declaration must be validated by the Regional Agrarian Office or the Office nominated by the regional government (art. 21.4).

However, the requirements for this accreditation do not follow international law. This regulation does not recognise the right of indigenous peoples to maintain their own autonomous political organisations to take their own decisions. Indeed, the Law of Political Parties establishes that the only form of political participation for citizens is through a legally recognised political organisation. Such limitation denies other forms of political participation such as indigenous organisations or indigenous institutions created on the basis of their own internal rules. International law establishes that states must guarantee the political participation of indigenous peoples not only through political parties but also through their own forms of organisation (See Court IDH. case YATAMA vs. Nicaragua).<sup>32</sup>

Another important issue is that the current legal framework only guarantees that indigenous peoples participate in the list of candidates in municipal and regional elections, but does not ensure that indigenous representatives occupy public positions. Indeed, there are no provisions that ensure that indigenous peoples occupy positions in the legislative, judicial, or executive branches. In that context, it would be important to compare the Peruvian framework with other legal models such as countries where indigenous peoples are entitled to reserved seats or a minimum number of representatives within local, regional, and national governments, and the election is regulated in accordance with mechanisms as defined by indigenous communities and not necessarily through national elections.

Peru has one of the largest indigenous population in Latin America<sup>33</sup>, In order to accommodate this inherent pluralism, the state has promoted a so-called inter-cultural citizenship, the official aim of which is to enable all citizens to express their voices on

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<sup>32</sup> Comisión Andina de Juristas, 2013. Implementación del derecho a la participación política indígena en Cusco y San Martín.-- Lima: Comisión Andina de Juristas; Konrad Adenauer Stiftung e.V.

<sup>33</sup> According to some studies, the indigenous population in Peru represents around 25 per cent to 45 per cent of the whole population: Central Intelligence Agency, 2014. *The World Fact Book*: <https://www.cia.gov/library/publications/the-world-factbook/geos/pe.html> (last accessed January 2014); Instituto Nacional de Estadística e Informática –INEI, 2005. Encuesta Nacional de Hogares sobre Condiciones de Vida y Pobreza 2005. [http://webinei.inei.gob.pe/anda\\_inei/index.php/catalog/14](http://webinei.inei.gob.pe/anda_inei/index.php/catalog/14) (last accessed March 2012).

public affairs with a profound respect for cultural and ethnic diversity.<sup>34</sup> In that respect, Peru has enacted the first Law of Prior Consultation in Latin America<sup>35</sup>, the purpose of which is to promote an inter-cultural dialogue between the indigenous peoples and the state. However, the law needs to be implemented and the last report of the Expert Committee of the ILO explicitly asks the government to explain how the state will ensure indigenous peoples' participation in programmes and development plans.<sup>36</sup>

#### 4. Andean Community elections

The Andean Community is a supranational organisation formed by Peru, Colombia, Ecuador, and Bolivia, whose objective is to promote independent and sustainable development through the integration of Andean and Latin American countries. The Andean Parliament is the deliberative organ of this supranational organisation; its main purpose being to represent the peoples of the Andean Community. It is constituted by representatives elected by universal and direct suffrage of each of its country members.

Law 28360 on the Election of Representatives to the Andean Parliament establishes that Peruvian representatives to the Andean Parliament are elected through universal, direct, free, and secret suffrage. The law provides that there must be five titular representatives, with two substitute members for each of them. Political parties must present a list of fifteen candidates who are either titular representatives or substitute candidates and alternate members according to their order in the preferential vote.

This election occurs in a single district according to the method of the '*cifra repartidora*'. Andean Parliament representatives are elected for the same period as the President of the Republic, Vice President, and Congress representatives, that is, for five years. To constitute a parliamentary group in the Andean Parliament, a political party must attain at least 5 per cent of the valid votes at the national level.

Candidates to the Andean Parliament must satisfy the same conditions as candidates for election to the Congress.<sup>37</sup> Every year over the duration of their mandate, they must report to Congress on the fulfilment of their functions in the Andean Parliament.

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<sup>34</sup> Programa de las Naciones Unidas para el Desarrollo – PNUD, 2013. *Ciudadanía Intercultural: Aportes desde la participación política de los pueblos indígenas de Latinoamérica*. Nueva York: PNUD.

<sup>35</sup> Law 29785, Law of Prior Consultation to Indigenous Peoples recognised in the ILO Convention 169 (September 2011), and its regulation approved by Decree 001-2012-MC (April 2012).

<sup>36</sup> Organización Internacional del Trabajo – OIT, 2013. *Informe de la Comisión de Expertos*. Ginebra: OIT.

<sup>37</sup> Organic Law of Elections, arts. 112 – 113.

## 5. Exercising electoral rights

### 5.1. Becoming a voter

In Peru eligible voters are automatically registered in the electoral roll of the municipality where they are registered as residents in the National Registry of Identification and Civil Status (RENIEC). Inscription to the latter is mandatory. Peruvian citizens abroad must send their requests to the RENIEC in order to be included in the electoral roll. The process of voter registration is the same for all elections, including referenda.

Political parties and political organisations can present candidates for the presidency and vice-presidency and a list of candidates for election of members of Congress only if they are registered in the Registry of Political Organisations of the National Elections Jury. The registration of each political party and political organisation remains valid if they obtained representation in Congress in the previous general elections. Those political parties that have not obtained representation in Congress maintain validity for one year after the election and then their registration is cancelled.<sup>38</sup>

### 5.2. Casting the vote

The method available for casting the vote is the same for all elections in Peru. Voters must cast a ballot in person at the polling station in the district where the voter is registered.

The only exception concerns Peruvian citizens abroad, who may cast an absentee ballot through postal voting. This method consists in the transmission of the vote through a form previously required by the consulate. The form must be returned by mail to the consulate where the voter is registered. This type of vote is only applicable to general elections and referenda.<sup>39</sup>

### 5.3. Running as candidate

In Peru the right to stand as a candidate is subject to three conditions: 1) membership of a legally registered political organisation; 2) the candidate must be elected as a result of a process of internal democracy within the political organisation, and 3) presentation of a so-called Plan of Government.

#### *Membership of a political organisation*

To run as a candidate, it is necessary to be a member of a political organisation. In Peru political organisations can be of three types: political parties (for national, regional, and local elections; political movements (only for regional elections), and local political

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<sup>38</sup> Organic Law of Elections, art. 87.

<sup>39</sup> Organic Law of Elections, art. 239.

organisations (only for local elections). The candidate's political organisation must be registered in the Registry of Political Organisations of the National Jury of Elections.<sup>40</sup>

According to the Law of Political Parties, Law 28094, political parties are the expression of democratic pluralism. They are citizens' associations that constitute private juridical persons whose aim is to participate in the realisation of legal and democratic objectives and the public affairs of the country within the framework of the Constitution and the Law of Political Parties.<sup>41</sup>

Political parties must ensure the 'defence of the democratic system' and 'contribute to the country's governability'.<sup>42</sup> This is the reason why the Supreme Court of Justice can declare the illegality of a political organisation when it considers that its activities are contrary to democratic principles, specifically: when its activities systematically affect citizens' civil liberties and rights; give political support to the actions and discourses of a terrorist organisation; or support drug dealers.<sup>43</sup>

In order to be registered in the Registry of Political Organisations, a political party must:

- a) Attach the foundational Act, and
- b) Attach a list of supporters that should be not less than 3 per cent of the citizens who voted in the latest national elections.

All citizens who have the right to vote can freely be affiliated to a political party. They must present a declaration in which they swear that they are not member of another political party, must fulfil the requirements of the political party statute, and be granted acceptance by the political party according to its statute. Political movements and local political organisations must be registered in the special registry that maintains the Registry of Political Organisations.

Only political parties that enjoy representation in Congress can receive public funding. Public funding must be used for activities of formation, training, and research within a five-year period following the election, as well as for the day-to-day spending of the political organisation. In addition, political organisations can receive funding

<sup>40</sup> Law 28094 – Law of Political Parties, arts. 3,17.

<sup>41</sup> Law of Political Parties, art. 1.

<sup>42</sup> Law of Political Parties, art. 2.

<sup>43</sup> Law of Political Parties, art. 14.

*Artículo 14°.- Declaración de ilegalidad por conducta antidemocrática La Corte Suprema de Justicia de la República, a pedido del Fiscal de la Nación o del Defensor del Pueblo, y garantizando el derecho a la pluralidad de instancia, podrá declarar la ilegalidad de una organización política cuando considere que sus actividades son contrarias a los principios democráticos y se encuentran dentro de los supuestos siguientes:*

*14.1 Vulnerar sistemáticamente las libertades y los derechos fundamentales, promoviendo, justificando o exculpando los atentados contra la vida o la integridad de las personas o la exclusión o persecución de personas por cualquier razón, o legitimando la violencia como método para la consecución de objetivos políticos.*

*14.2 Complementar y apoyar políticamente la acción de organizaciones que para la consecución de fines políticos, practiquen el terrorismo o que con su prédica contribuyan a multiplicar los efectos de la violencia, el miedo y la intimidación que el terrorismo genera.*

*14.3 Apoyar la acción de organizaciones que practican el terrorismo y/o el narcotráfico.*



from their members, donations, etc. However, political parties are not allowed to receive funding from the following organisations:

- a) From public entities, including public companies;
- b) from religious organisations; and
- c) from foreign political parties or state agencies, except when funding is directed to research and training.

### *Internal democracy*

Candidates must be elected as a result of a process of internal democracy according to the regulations of the political organisation and the Law of Political Parties.<sup>44</sup>

Political organisations have the obligation to undertake internal elections of candidates for all types of elections. These internal elections must be undertaken at least 21 days before the date of inscription of the candidates.

There must be internal elections for the following public positions: a) President and Vice- President of the Republic; b) representatives of Congress and the Andean Parliament; c) President, Vice-President, and regional council representatives; d) mayor and municipal council representatives, and e) any other position established in the statutes of the political party.

### *Plan of Government*

Political parties, alliances, political movements, and in general political organisations that present candidates in national, regional, or local elections, must attach a Plan of Government to the list of candidates.<sup>45</sup> In addition, they must publish their Plan of Government on their website and maintain it over the entire electoral period. The Plan must fulfil the formal requirements established in the Law of Political Parties pending the possibility of non-inscription.

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<sup>44</sup> Law of Political Parties, art. 19.

<sup>45</sup> Law of Political Parties, art. 23.

### The MOVADDEF case

The 'Movement for Amnesty and Fundamental Rights' (Movadef) is a national political organisation, the statute of which make 'Marxism, Leninism, Maoism and Gonzalo thinking' an ideological principle. This ideology refers to the political proposals of Abimael Guzman, who was the leader of the terrorist group Shining Path (*Sendero Luminoso*), perhaps the most sanguinary terrorist group in Peruvian history – accused of being responsible for over 30,000 deaths.<sup>46</sup> Like any other political organisation wishing to participate in elections Movadef, sought to be registered as a political party in the Registry of Political Organisations of the National Jury of Elections.

The Registry of Political Organisations, through Resolution N° 0224-2011-ROP/JNE, has asserted that the admission of Movadef as a political party would effectively endorse the violent actions of Shining Path, which have negatively affected the democratic system. Since the aims of Movadef were contrary to the Constitution and the Law of Political Parties (art. 2), the Registry concluded that its inscription should be denied. Movadef appealed to the National Jury of Elections, arguing that the Registry's decision violated its constitutional right to define its ideology and to participate in the political life of the country. The Jury enacted Resolution N° 002-2012-JNE and declared null the Registry resolution for failing to rule on formal aspects of the inscription procedure. Public opinion and experts alike opposed this decision because it failed to analyse the core question, focusing instead on the formal aspects of the procedure. The Registry was then required to rule again on procedural issues such as the conformation of committees, internal democracy, but also maintained its original opposition to the inscription of Movadef and its 'Gonzalo thinking'. Through Resolution N° 008-2012-JNE, the Registry argued: “We have the unavoidable duty of protecting the democratic system and the political Constitution and for that reason and because of the latent possibility that Movadef puts into practice ‘Gonzalo thinking’ and destroys the democratic system with violent actions that in the past affected human rights, the Registry has decided to deny the registration of Modavef”. As Movadef decided not to appeal the decision, in what was interpreted as a legal strategy consisting of bringing the case directly to the Inter-American Court of Human Rights, the Jury confirmed the decision of the Registry.

The Movadef case has been highly controversial. The Law of Political Parties establishes that, through a judicial decision, the Supreme Court has the power to cancel the inscription of a political party that promotes non- democratic practices. However, this was not the case in Peru where the Registry of Political Parties, an administrative agency, has denied inscription through an administrative decision.

<sup>46</sup> Final Report of the Commission of Truth and Reconciliation. Available at <http://www.cverdad.org.pe/ifinal/index.php> (accessed on June 2014).

## 6. Political Rights and democracy in Peru

### 6.1. Comparative analysis

#### *Local enfranchisement of non-national residents*

The Law of Municipal Elections of 1997, Law 26864 (ar. 7) introduced the franchise for foreigners in local elections. Foreign residents who are at least eighteen years of age with residency of more than two consecutive years before election day have the right to vote and stand as candidates (with the exception of frontier municipalities) if they are registered in a special Registry. They are not enfranchised in regional and national elections.

According to the Comparative Study of Modolo<sup>47</sup> in Mercosur countries<sup>48</sup>, an electoral regime is ‘full’ in relation to foreign residents if they are enfranchised at national, regional, and local levels; is restrictive when it is limited to local elections, and is exclusionary when this right does not exist at any level.

All member states of MERCOSUR, in spite of differences and heterogeneities, recognise some type of electoral rights for foreigners with legal residency. All of them, with more or less demanding requirements, have granted voting rights to qualified foreign residents in local elections. The residency requirement ranges from two years (Buenos Aires Province, Bolivia, Peru), three years (Brazil); five years (Colombia, Chile, Ecuador), ten years (Venezuela), to fifteen years (Uruguay). At the regional level, recognition of the right to vote is limited to selected provinces of Argentine and Ecuador, some departments of Uruguay and some Venezuelan states. Only Chile, Ecuador and Uruguay allow foreigners to vote at the national level.<sup>49</sup>

The right to stand as a candidate is less widespread. For example, Uruguay, Bolivia, Colombia, Chile, and Venezuela reserve active suffrage to their nationals only. Buenos Aires province establishes a limit on the number of foreign council members (who cannot exceed one third of the total), while Peru does not allow foreign residents to stand as candidates for any municipal positions in frontier areas. Some countries even discriminate among their own citizens, according to the mode of acquisition of citizenship. Hence the right to stand as a candidate is frequently reserved to citizens by birth (e.g. naturalised citizens cannot become President in Argentina, Brazil, Ecuador, and Peru, amongst others).<sup>50</sup>

<sup>47</sup> Modolo, Vanina, 2011. Derechos Políticos de los Extranjeros en el mercosur. Superando la nacionalidad en el ejercicio al voto. In Novick, Susana (dir.), *Migración y Políticas Públicas. Nuevos escenarios y desafíos*. Buenos Aires, Editorial Catálogos, pp. 63-88.

<sup>48</sup> Mercosur is a sub-regional bloc comprising [Argentina,] Brazil, Paraguay, Uruguay, and Venezuela. Its associate countries are Chile, Bolivia, Colombia, Ecuador, and Peru.

<sup>49</sup> Modolo, Vanina, op. cit.

<sup>50</sup> Modolo, Vanina, op. cit.

### ***External voting rights of Peruvians abroad***

In Peru the external franchise was introduced in the Constitution of 1979 and was approved without the mediation of potential recipients or by public debate. According to IDEA International, there are two patterns in the adoption of the external franchise.<sup>51</sup> In the first pattern, through the executive branch or a parliamentary group, the political class promotes this right without the lobbying of potential recipients. In the second case, this right derives from a demand from potential recipients organised in groups residing abroad. The process generates intense debate and expectations.

Examples of the first pattern have been found in Brazil (1964), Peru (1979), Honduras (2001), and Ecuador (2002). In Peru Congress approved this right without the intervention of political elites or organised groups speaking on behalf of the expatriate population. Bottom-up cases include Colombia (2002), which is the only country in the region in which the demands of foreign electors achieved the guarantee of representation in the *Camara Baja*, Mexico (2005), in which the organisational capacity of Mexicans abroad, especially in the US, was fundamental to exposing the issue in the public arena and obtaining benefits through a legislative resolution; and Venezuela (1993), where in 1997 a mass media initiative provided expatriate citizens with the opportunity to advocate extension of the suffrage.<sup>52</sup>

Nevertheless, as a general rule, the expansion of the franchise comes in the wake of processes of openness, liberalisation, and democratisation. This dynamic is particularly clear in the case of Peru, where the Constitution of 1979 marked the transition from a military regime to a civil government.

But while the external franchise may be understood as a manifestation of a broader process of democratisation in Peru, it has not affected electoral outcomes, not least because political parties have largely neglected this new electorate. In spite of the fact that an estimated 3.5 million, or 10 per cent of the Peruvian population, reside abroad, the number of registered voters has been much smaller. Besides, abstention has been consistently higher than among the domestic electorate: 38 per cent and 54 per cent in 2000 and 2006, respectively.<sup>53</sup>

## **6.2. The performance of the Peruvian democratic system**

Whether in terms of overall democratic performance, respect, and consolidation of the right of political participation after analysing the legal framework of electoral rights in Peru, it is important to approach the outcomes of this framework using a broader comparative perspective. In order to undertake this analysis, one must acknowledge at the onset that political participation does not refer simply to electoral participation. Rather, it encompasses mechanisms of citizen participation and control over public affairs.<sup>54</sup>

<sup>51</sup> Navarro, Carlos, 2007. El voto en el extranjero. En: *Treatise on Compared Electoral Law of Latin America*. International Institute for Democracy and Electoral Assistance.

<sup>52</sup> Navarro, Carlos, op. cit.

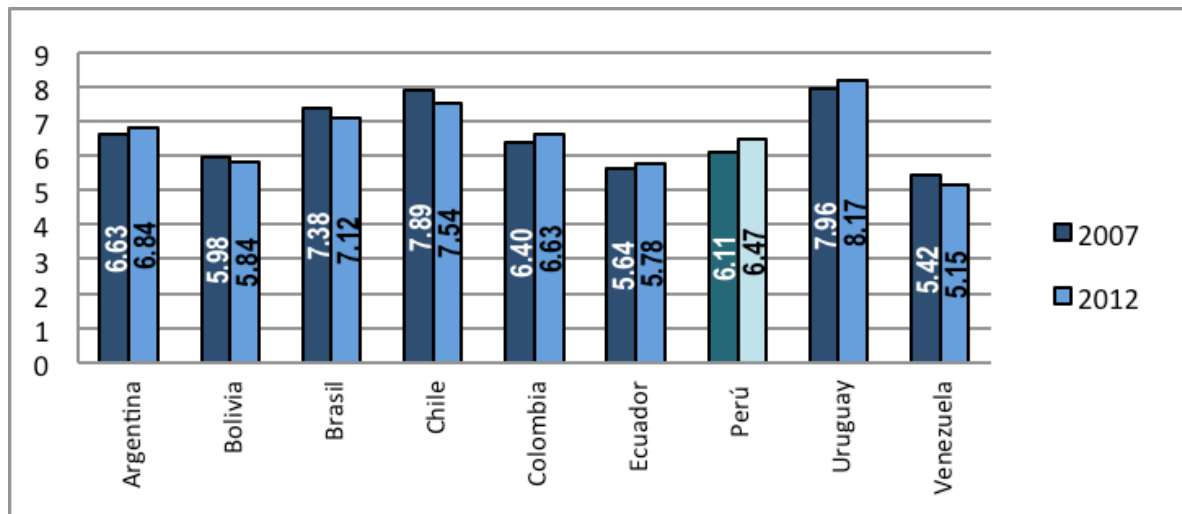
<sup>53</sup> Araujo, Lorena, 2010. Estado y voto migrante: una radiografía de la Región Andina. *Andina Migrante*, N° 7, pp. 1 - 10.

<sup>54</sup> These mechanisms are regulated in Law N° 26300 – on the Citizens' Rights to Participation and Control, and include initiatives of constitutional reform, legislative proposal, referenda and regional and local legal proposals (rights to participation), the revocation of authority, and accountability (rights to

In the international arena, there are some important indexes and indicators evaluating the performance of the Peruvian legal and democratic system. For example, according to the *Democracy Index* elaborated by *The Economist Intelligence Unit*, in Peru the right to political participation is generally respected with transparent elections. The *Democracy Index* is based upon qualifications of 60 indicators grouped into five categories: 1) electoral process and pluralism; 2) civil liberties; 3) government functioning; 4) political participation, and 5) political Culture.

Each category has a qualification assessed along a scale of zero to ten and the general index is the simple average of these five categories. According to the Index, Peru's democratic system improved between 2007 to 2012 (with a score increasing from 6.11 to 6.47), although its overall performance has remained below Chile, Uruguay, Brazil, and Colombia.

**Figure 2: Comparative analysis from the *Democracy Index***



Source: Democracy Index, 2012

In order to improve the position of Peru, it appears necessary to transform the 'political culture' and encourage 'electoral pluralism', two crucial elements of the *Democracy Index*. Indeed, the quality of political participation in Peru is jeopardised by the precariousness of political parties, the negative perception of democracy, and the limited involvement in public affairs of women, young people, and indigenous peoples. The lack of active participation of these populations can lead to situations in which the authorities do not act in conformity with the general interest.<sup>55</sup>

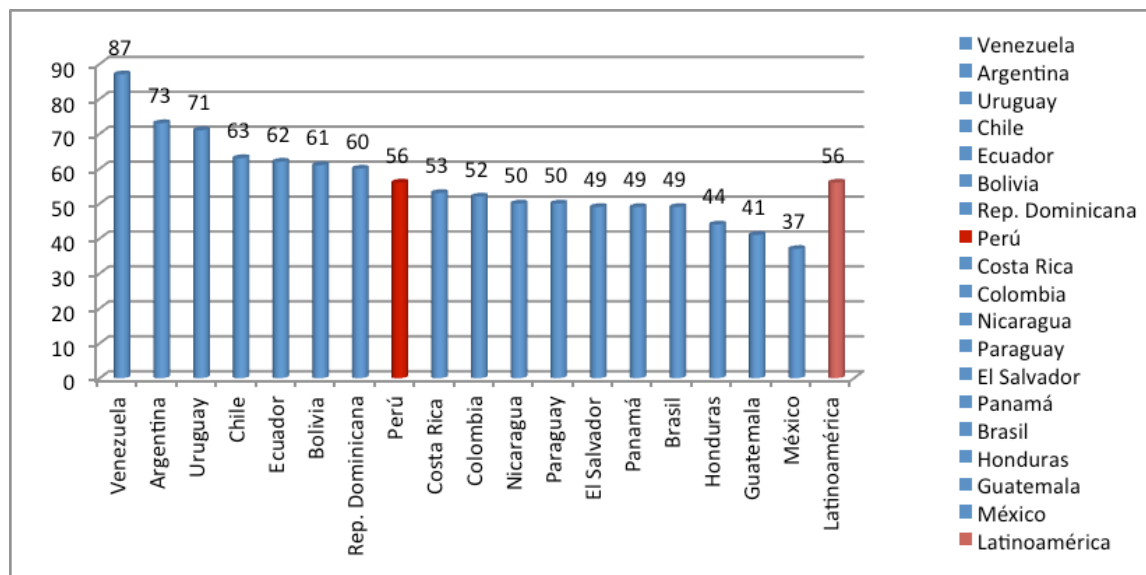
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control). There are also other modes of participation, among them, in the Law of Participatory Budgeting - Law N° 28056 or the regulation of the transparency, access to environmental public information, and citizens' participation and consultation in environmental issues, approved by Decree N° 002-2009-MINAM.

<sup>55</sup> Programa de las Naciones Unidas para el Desarrollo – PNUD, 2004. *La Democracia en América Latina: Hacia una democracia de ciudadanas y ciudadanos*. Nueva York: PNUD.

According to the report of the *Latinobarómetro* 2013, only 56 per cent of respondents assert that democracy is the best form of government, a figure below Venezuela, Argentina, Uruguay, and Chile, but within the Latin American average.

**Figure 3: Support for democracy in Peru (2013)**



Source: Latinobarómetro 2013

Another important insight is that more than 60 per cent of respondents assert that they have no sympathy for any political organisation. This situation may be partly explained by the leadership and organisational style of the political parties that do not respond to citizens' demands.<sup>56</sup> In addition, political parties are not sufficiently transparent in their funding and not sufficiently institutionalised. Hence, establishing mechanisms for their consolidation and accountability appears to be a priority.

In such a context of institutional precariousness, mechanisms of participation and citizen control might be under-used or ill-used. They are under-used owing to the lack of a political culture and are ill-used because of the lack of civic and democratic compromise.

Regarding political pluralism, 30 per cent of seats in national elections for the Congress are reserved for women.<sup>57</sup> The law also provides for quotas of representation for women (30 per cent), young people (20 per cent), and indigenous peoples (15 per cent) in regional and local elections (15 per cent).<sup>58</sup> While these quotas may promote formal participation, they do not ensure the quality of participation in different public affairs owing to the persistence of discriminatory practices against women and indigenous peoples, affecting the exercise of their civil and political rights.

<sup>56</sup> Programa de las Naciones Unidas para el Desarrollo – PNUD, 2012. *Perú: la oportunidad de un nuevo ciclo de desarrollo*. La Paz: IDEA Internacional – PAPEP – PNUD.

<sup>57</sup> Organic Law of Elections, art. 116.

<sup>58</sup> These quotas are regulated in the Law of Regional Elections Law N° 27683, Law of Municipal Elections – Law N° 26864, and and Law of Political Parties – Law N° 28094.

## 7. Conclusion

All Peruvian citizens have the right to vote in national elections, whether they reside in Peru or abroad. However, the right to run as a candidate is reserved to those Peruvians with legal residency in the country. In regional elections only Peruvian citizens with residency in Peru have the right to vote and be elected. As for local elections, foreign citizens are granted the right to vote and be elected provided that they can document at least two years of continuous residence in Peru and are registered as voters in a separate electoral registry. Therefore, the electoral rights of foreign residents and Peruvian citizens abroad are rather restricted.

The Peruvian electoral system provides for special electoral quotas for indigenous peoples, women and the youth at national, regional and local elections. These quotas, however, do guarantee a minimum number of seats in elected bodies. Instead, they only apply to candidates. While this regulation seeks to promote an inclusive democracy, this aim could be better through alternative mechanisms ensuring the political participation and fair representation of those groups that were historically excluded from the political system.

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