



Taking Stock of the Implementation of Quotas in Peru

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Paper presented at International IDEA workshop

The Implementation of Quotas: Latin American Experiences

Lima, Peru, 23–24 February 2003

Women won the right to vote in 1955.¹ Nonetheless, as Table 1 illustrates, few women have been elected to Congress. During the debate prior to the adoption of the quota law, it was argued: ‘At this pace, it will take almost 54 years for there to be 30 women members of Congress in Peru (25%)’,² that is, it would not happen until 2051.

Table 1: Participation of women in the Legislature/Constituent Assembly

Year	Percentage		
	Deputies	Senators	Congresspersons
1980	7.2%	3.3%	–
1985	5.6%	5.0%	–
1990	5.6%	6.7%	–
1992	–	–	8.8%
1995	–	–	10.8%

Source: Movimiento Manuela Ramos.

In March 1997, congresswomen Martha Hildebrandt and Luz Salgado introduced Proposed Law No. 2574/96-CM-CR, whose single article provided that: ‘The lists of candidates for

members of Congress be made up of at least 25% women'. The Defensoría del Pueblo (Office of the Human Rights Ombudsman) played a very active role in the process, providing arguments to support the adoption of election quotas in the national legislation.³

On 25 September, Law No. 26,859, the Organic Election Law, was enacted; Article 116 provided as follows: 'The lists of candidates to Congress should include a number not less than 25% women or men.' On 13 October 1997, Law No. 26,864, the Municipal Elections Law, was enacted. Its Article 10(2) indicated that the list of candidates should be submitted in a single document: '2. The number that indicates the position of the candidates for municipal council member on the list, which should be constituted by not less than 25% men or women.'

As is apparent, the wording of both articles differs from that contained in Proposed Law No. 2574/96 CM-CR; the latter also includes men, thereby blocking the possibility of electoral lists with candidates of a single sex. It should be noted that no electoral list has ever been made up exclusively of women, precisely because of their historical exclusion from political participation. Accordingly, a provision on electoral quotas that includes men 'dissimulates' the nature of electoral quotas as a form of affirmation action for women.

The Municipal Elections of October 1998

The Electoral Supervision Work of the Defensoría del Pueblo Since 1998

The Defensoría del Pueblo has supervised all elections held in Peru since 1998. The first intervention in the municipal elections that year involved responding to a complaint by several citizens, male and female, especially in the areas under the state of emergency. In response to that request, the Defensoría del Pueblo organized the first supervisory effort in the cities of Andahuaylas, Huamanga, Huancavelica and Huancayo, and the near-by districts. That supervision made it possible to verify the precarious conditions for exercising democracy in the emergency zones. In the district of Vinchos, in Ayacucho, for example, the elections were held without secret ballot booths, in the open air, and in the company of armed members of the military. The presence of the Defensoría del Pueblo on the ground, and the photographic evidence that was presented, contributed to the National Elections Tribunal's decision to annul the election results in that district.

One of the criteria for the Defensoría del Pueblo to act with respect to elections has been preferential protection for the rights of women, adopting a gender perspective to promote and guarantee affirmative action on their behalf.⁴

The First Elections in which the Quota Applied

In Peru's elections, voting is by closed and blocked lists, made up of the candidate for mayor and a certain number of local council members. Accordingly, the place of a given candidate is very important. If, for example, the municipal council has ten members, the winner gets six council members, as the law provides that the winner has a majority.

The National Elections Tribunal, by Resolution No. 280-98 JNE, of 11 June 1998, specified the number of women or men who should be on the electoral lists to meet the minimum quota of at least 25 percent of the candidates being of one or the other sex. See Table 2.

Table 2: Minimum Number of Women Candidates on Electoral Lists

Composition of the municipal government	Number of candidates to satisfy the 25% minimum
Mayor and 39 council members	10
Mayor and 15 council members	4
Mayor and 13 council members	4
Mayor and 11 council members	3
Mayor and 9 council members	3
Mayor and 7 council members	2
Mayor and 5 council members	2

Source: Resolution No. 280-98-JNE. Prepared by the Defensoría del Pueblo.

Problems in Calculating the Electoral Quota and the Intervention of the Defensoría del Pueblo

The Special Elections Tribunal of Huancayo⁵ registered a list of nine candidates for council members of which only two were women, violating the provision of Resolution No. 280-98 JNE. Although the National Elections Tribunal finally declared that registration unlawful, the Defensoría del Pueblo requested a copy of the resolution from the Special Elections Tribunal of Huancayo to study its reasoning.

In Resolution No. 11 of the Special Elections Tribunal of Huancayo of 8 September 1998, the following arguments are noted for registering the list of nine candidates for council members that lacked the requisite number of women.

1. The constitution does not provide that the electoral lists must be made up of men and women, and, accordingly, given the hierarchy of the laws, the constitution should prevail.
2. The failure to include a woman on the list cannot impede participation in the elections.
3. Twenty-five percent of nine is 2.25, and this figure, according to the rules of mathematics, should be rounded down to two, not up to three.

The Defensoría del Pueblo turned to the president of the Special Elections Tribunal of Huancayo, indicating that the National Elections Tribunal had fixed the number of women candidates at three when there are nine council members, because otherwise one would be in violation of the provision that requires that at least 25 percent of the candidates on the lists be women: two represents 22 percent of nine. In addition, the president of the National Elections Tribunal was asked to disseminate complete information on the quota system to avoid similar problems in future elections.

Some lists included a woman candidate for mayor when calculating the 25 percent minimum. Nonetheless, pursuant to Article 10(2) of the Municipal Elections Law and Resolution No. 280-JNE, the National Elections Tribunal rejected the appeals by political organizations that had considered the woman candidate for mayor in calculating the 25 percent minimum. In this context, several lists headed by women (Canta, Condesuyos, and districts of Nazca), which had included the woman candidate for mayor in their calculations of the quota, were kept from participating in the elections.⁶

The Results of Implementing Electoral Quotas

Despite the problems noted, the implementation of the quota system in the municipal elections of October 1998, and in the complementary elections of July 1999, showed that it is an effective instrument for increasing the participation of women council members. The proportion of women local council members (*regidoras provinciales y distritales*) climbed from eight per cent to 24 percent. (See Table 3.)

Table 3: Number of Women Elected to Local Councils (Provincial and District) in the 1995 and 1998–99 Municipal Elections

	Number of council members in 1995	Percentage	Number of council members in 1998–99	Percentage
Men	10,074	92	8,945	76
Women	933	8	2,826	24
Total	11,007	100	11,771	100

Source: Perú Compendio Estadístico 2001, INEI. Prepared by Defensoría del Pueblo.

In contrast, the increase in the number of women mayors (provincial and district) was practically negligible in relation to the municipal elections of 1995. In the first case, there was an increase from six women provincial mayors to ten. (See Table 4.) The number of women district mayors increased from 47 to 48. (See Table 5.) The increase in the number of women council members shows that they secured good positions on the lists, even though the law only requires that 25 percent of the candidates on the lists be women. In the complementary elections of July 1999, five illiterate women were elected to local councils; four of which were between the ages of 29 and 36 at the time.⁷

Table 4: Women Provincial Mayors Elected in October 1998 and in July 1999

Provinces	Number of women mayors in 1995	Provinces	Number of women mayors in 1998–99
La Mar (Ayacucho)	1	Casma, Ocos (Ancash)	2
Huánuco, Puerto Inca (Huánuco)	2	Contumazá, San Miguel (Cajamarca)	2
Nazca (Ica)	1	Quispicanchis (Cusco)	1
Bolívar (La Libertad)	1	Puerto Inca (Huánuco)	1

Mariscal Nieto (Moquegua)	1	Oyón (Lima)	1
		San Martín (San Martín)	1
		Morropón	1
		Yauli La Oroya (Junín)	1
Total	6		10

Source: National Office on Election Processes. Prepared by Movimiento Manuela Ramos.

Table 5: Women District Mayors Elected in October 1998 and in July 1999

Department	Number of women mayors In 1995	Number of women mayors in 1998–99
Amazonas	3	6
Ancash	4	2
Arequipa	4	2
Ayacucho	2	2
Cajamarca	2	4
Cusco	5	4
Huancavelica	2	1
Huánuco	2	3
Junín	4	2
La Libertad	2	2
Lima	12	12
Loreto	1	1
Moquegua	–	2
Pasco	–	1
Puno	2	1
San Martín	1	2
Tumbes	–	1
Ucayali	1	–
Total	47	48

Source: National Office of Election Processes. Prepared by Movimiento Manuela Ramos.

The General Elections of 9 April 2000

On 9 April 2000, elections were held for president, vice-president and members of the national Congress. It is impossible to refer to those elections without recalling the many questions they raised, among other reasons because of the lack of neutrality on the part of some public officials, and the apparent use of government resources to benefit the candidates of the Perú 2000 party, headed by former President Alberto Fujimori.⁸

In 2000, the 25 percent quota was applied in congressional elections for the first time. According to the election law, in legislative elections the voters have the option of the preferential vote. The first effect of the quota law was to increase the percentage of women candidates for Congress, from 11 percent in 1995 to 26 percent in 2000. As Ana María Yáñez has indicated, this resulted in more women learning about the internal mechanisms of the various political parties, in many cases harmonizing their family responsibilities with their public roles.⁹ However, there were a number of problems with the implementation of the quota.

1. A woman did not head a list.
2. Only 16 percent of the candidates in the first five places of the lists were female.
3. Only 17 percent of the candidates in the first ten places were female.
4. Of the first 20 places, women occupied only 18.5 per cent of them.
5. Most of the women were in the bottom half of the list.¹⁰

Moreover, of nine presidential slates, only three included women (Alianza Popular Revolucionaria Americana (APRA), Solidaridad Nacional and Somos Perú)

The Programas para la Mujer (PROMUJER) consortium (Manuela Ramos, Calandria, Cedep and Cesip) commissioned an exit poll from DATUM Internacional, which was administered on 9 April 2000 in Arequipa, Ayacucho, Callao, Huancayo, Huaraz, Lima, Maynas, Puno and Trujillo. It revealed that:

1. more men than women made use of the preferential vote (84 percent of men and 82 percent of women);
2. most of the electorate voted only for men: 70 percent, counting both men and women, voted for one or two male candidates;
3. a minority of the electorate voted only for women: 14 percent, counting both men and women, voted for one woman or two women;
4. more women than men voted for women: 36 percent of women, compared to 25 percent of men, voted for at least one woman; and
5. More women than men voted only for women: 18 percent of women voted for one or two women, while 11 percent of men did the same.¹¹

In all, 22 percent of the members elected were women, that is, 26 women legislators were elected. Implementing the quotas led to a doubling in the number of women legislators. In 1995, 13 women had been elected, accounting for 11 percent of the total. Of all the women legislators elected, 20 were elected for the first time, and six were re-elected. Only two women candidates who ran for re-election lost.¹²

Thanks to the preferential vote (open lists), of the 26 congresswomen elected, 16 improved their position on the list. Ten witnessed a decline in their position. A larger share of the women saw their position rise, that is, 65 percent, compared to 63 percent for men.¹³ In three cases, women garnered the largest number of votes of all candidates on the list, even though none of them headed up their respective list. These were Mercedes Cabanillas¹⁴ of the APRA, Ana Elena Townsend of Somos Perú and Gloria Helfer of the Union por el Perú (UPP).

The 2001 Congressional Elections and Multiple Electoral Districts

Pursuant to the agreements reached in the dialogue facilitated by the Organization of American States (OAS), former President Alberto Fujimori called general elections for the president, vice-presidents, and members of Congress, by Supreme Decree No. 028-2000-PCM, published on 10 November 2000. President Valentín Paniagua ratified the call for general elections in Supreme Decree No. 031-2000-PCM, published on 2 December 2000.

For this election, it was necessary to amend the constitution and the Organic Electoral Law. Law No. 27,365, the Law on Constitutional Reform, published in the official gazette *El Peruano* of 5 November 2000, did away with the possibility of immediate re-election of the president, reduced the presidential term and the congressional terms of the authorities elected in the 2000 general elections, and cut the lead time for public officials to resign in case they wished to run for a seat in Congress.¹⁵

The Recommendation of the Defensoría del Pueblo to the Congress of the Republic to Increase the Electoral Quota

In Official Note No. DP 2000-1080, of 15 November 2000, the Human Rights Ombudsman recommended to the Congress, through the chair of the Committee on Constitution and Regulation, that the electoral quota be raised from 25 percent to 30 percent and that multiple electoral districts be established.

Law No. 27,387, of 29 December 2000, amended several articles of Law No. 26,859, the Organic Electoral Law. The amendments include changes to Articles 21 and 116, by virtue of which multiple electoral districts were introduced, and an increase in the electoral quota from 25 to 30 percent for elections of members of the national Congress.

Under the multiple district system, Peru was divided into 25 electoral districts, each corresponding to one seat, and the National Elections Tribunal was vested with the authority to distribute the remaining 95 seats proportional to the number of voters in each district; all voters residing abroad are considered to be within the electoral district of Lima. Resolution No. 057-2001-JNE, published on 18 January 2001, set the number of seats that corresponds to each electoral district.

The Erroneous Calculation of the Electoral Quota and the Intervention of the Defensoría del Pueblo

Resolution No. 068-2001-JNE, issued by the National Elections Tribunal and published in *El Peruano* on 24 January 2001, included the following table, detailing the number of members of Congress needed to comply with the electoral quota of 30 percent. (See Table 6.)

Table 6: Number of Members of Parliament Needed to Comply with the 30 Percent Electoral Quota

Number	Electoral districts	Congresspersons for each district	Number of candidates for each list	Minimum number of male or female candidates for each list
1	Amazonas	2	3	1
2	Ancash	5	5	2
3	Apurímac	2	3	1
4	Arequipa	5	5	2
5	Ayacucho	3	3	1
6	Cajamarca	5	5	2

7	Cusco	5	5	2
8	Huancavelica	2	3	1
9	Huánuco	3	3	1
10	Ica	4	4	1
11	Junín	5	5	2
12	La Libertad	7	7	2
13	Lambayeque	5	5	2
14	Lima and abroad	35	35	11
15	Loreto	3	3	1
16	Madre de Dios	1	3	1
17	Moquegua	2	3	1
18	Pasco	2	3	1
19	Piura	6	6	2
20	Puno	5	5	2
21	San Martín	3	3	1
22	Tacna	2	3	1
23	Tumbes	2	3	1
24	Ucayali	2	3	1
25	Callao	4	4	1
Total		120	130	44

Source: National Elections Tribunal.

Nonetheless, one may note that, in the electoral districts of Ica and Callao the quota represented only 25 percent of all candidates. And in La Libertad the quota represented 28.5 percent. Accordingly, there were only 44 women candidates instead of 47, as should have been the case if the minimum quota of 30 percent had been applied in all of the electoral districts. In these three cases, on calculating the quota and obtaining a fractional number, the National Elections Tribunal rounded down instead of up, resulting in a quota of less than 30 percent. It forgot that the law notes that the quota prescribes a minimum number for each list.

Consequently, in order to forestall the violation of women's rights, in Official Note DP-2001-081 of 31 January 2001, the Human Rights Ombudsman called on the National Elections Tribunal to amend Resolution No. 068-2001-JNE, solely for the purpose of setting at two the minimum number of women candidates for the electoral districts of Ica and Callao, and at three for the electoral district of La Libertad. That appeal took into account that Article 116 of the Organic Electoral Law plainly indicates that 'the lists of candidates to the Congress in each electoral district should include a number not less than 30 per cent women or men', making it possible, therefore, to establish a percentage greater than the requisite minimum. A similar request to the National Elections Tribunal was made by the chairwoman of the Committee on Women and Human Development of the national Congress, and by the Movimiento Manuela Ramos.

It should be noted that the term for registering candidacies was to expire on 8 February 2001, which is why the request of the Defensoría del Pueblo was entirely appropriate. Nonetheless, the National Elections Tribunal did not rectify Resolution No. 068-2001-JNE. To the contrary, via Resolution No. 122-2001-JNE, published on 7 February 2001 in *El Peruano*, the National Elections Tribunal rejected the request for rectification of Resolution No. 068-2001-JNE, formulated by the Defensoría del Pueblo, the chairwomen of the Committee on Women and Human Development, and the Movimiento Manuela Ramos. It should be pointed out that

the National Elections Tribunal is the final forum for appeal on electoral matters, and so its rulings are not subject to appeal.¹⁶

Resolution No. 122-2001-JNE, failing to heed the nature of affirmative action, noted in its considerations section the following points.

1. The electoral legislation on quotas for the political participation of citizens is not directed exclusively towards the female sex. Accordingly, such measures, which contribute to consolidating legal equality between the sexes, cannot be considered discriminatory.
2. Resolution No. 068-2001-JNE established generally, proportionally, and equitably the minimum number of women and men who should constitute the lists of candidates to the Congress, thus there is no gender discrimination.
3. Political participation is 'a right of the parties whose essential requirement is freely-given consent, in keeping with the provisions of Article 118 of Law No. 26,859,¹⁷ has been provided for generally'.

In this context, the Ombudsman called on the Special Elections Tribunals of La Libertad, Ica, and Callao, as organs entrusted with administering electoral justice, and responsible for implementing the provisions of Articles 51¹⁸ and 138¹⁹ of the constitution, to accord preference to protecting the rights to equality and political participation recognized in Articles 2(2), 2(17) and 2(31) of the constitution over any lesser-ranking provision, such as Resolution No. 068-2001-JNE. Accordingly, he called on them to verify that the lists of candidates presented by the political groupings complied with the minimum expressly established by the electoral law, requiring that they rectify any errors in the shortest possible time.

By Resolution of 9 February 2001, the Special Elections Tribunal of Ica decided not to accept the request made by the Defensoría del Pueblo; the Human Rights Ombudsman appealed that ruling, so that the National Elections Tribunal could review the case. The appeal was granted. It should be noted that the Defensoría del Pueblo did not receive any response from the Special Elections Tribunals of La Libertad or Callao.

The problem brought about by failure to comply with the minimum 30 percent quota in three electoral districts resulted in questions being raised on this point in the first report to evaluate the 2001 elections (Primer Informe de Evaluación del Proceso Electoral 2001), issued on 16 February 2001 by the civic association Transparencia. In addition, the statement issued by the second pre-electoral delegation of the National Democratic Institute for International Affairs (NDI) and the Carter Center, on 9 March 2001, mentioned the existence of an error in calculating the number of places accorded to women candidates for the lists for Congress in La Libertad, Ica and Callao, and emphasized that, if this problem were not resolved in this election, the authorities should at least acknowledge their mistake and ensure that it not recur. Yet nothing of the sort happened.

On 28 February 2001, the Movimiento Manuela Ramos sent a communication to Eva Zetterberg, the Chief of the Observer Mission from the European Union, on the failure to abide by the electoral quotas.

By Resolution No. 295-2001-JNE, published on 4 April in *El Peruano*, the National Elections Tribunal rejected the appeal by the Ombudsman regarding Resolution No. 029-2001-JEEI, issued by the Special Elections Tribunal of Ica. In the considerations section of Resolution No. 295-2001-JNE, the National Elections Tribunal noted:

That ... Mr. Walter Albán Peralta requested of the National Elections Tribunal that it amend Resolution No. 068-2001-JNE, considering that it reduces the opportunities for women's political participation; the request was rejected by Resolution No. 122-2001-JNE of 5 February 2001, as the electoral legislation on reserving quotas to guarantee the political participation of citizens is directed to both sexes, without favouring one exclusively to the detriment of the other, which would, to the contrary, entail gender-based discrimination.

The National Elections Tribunal confirmed its lack of familiarity with affirmative action and with the implications of the principle of equality. Accordingly, in three electoral districts, the general elections of 8 April 2001 were held without respecting the rights of women to equality and to be free from discrimination in political participation.

In a letter dated 11 April 2001, Zetterberg expressed her concern about the situation of Peruvian women to the Movimiento Manuela Ramos. For this reason, the Preliminary Report of the European Union Election Observation Mission (8 April 2001) expressly indicated that:

'In the area of rights, we should refer to issues of discrimination. To foster women's representation, which has traditionally suffered from discriminatory practices, a minimum proportion of thirty percent has been established to seek a balance between the sexes in the presentation of candidacies. It has not always been respected, and claims have not been upheld'. (English translation).

Additionally, the Movimiento Manuela Ramos filed a complaint with the OAS Election Observation Mission regarding the failure to comply with quotas in the 2001 general elections. On 16 April 2001, Héctor García, the mission's Compliance Officer, informed the Movimiento Manuela Ramos that, on 12 March, he had requested information from the National Elections Tribunal on the processing of that complaint, yet to date no official response had been forthcoming. Indeed, the Movimiento Manuela Ramos never received any information indicating that any official response was ever given to the OAS mission.

In the 11 July 2001 Final Report of the NDI/Carter Center (Joint Election Observation Project), under the heading Election Administration and Procedures, it was expressly stated that, in the 2001 election, the 30 percent quota was not attained in the districts of La Libertad, Ica or Callao.

Having exhausted domestic remedies, the Defensoría del Pueblo deemed it appropriate to lodge a petition with the Inter-American Commission on Human Rights. That petition is discussed later in this paper.

The Number of Women Candidates and the Number of Women Elected to Congress

In the 2000 congressional elections, 36 percent of the candidates running for a seat in Congress were women, up from 25 percent in 2000. (See Table 7.)

Table 7: Gender Breakdown of Candidates for Congress, 2000

Candidates	Number	Percentage
Men	1,020	64
Women	575	36
Total	1,595	100

Sources: ONPE, 2001, Participation and Leadership Program (PROMUJER) of the Movimiento Manuela Ramos. Prepared by Defensoría del Pueblo.

Of nine presidential slates, six included a woman. Nonetheless, despite the increase in the number of women candidates, only 22 women were elected to Congress, accounting for 18 percent of the members. (See Table 8.)

Table 8: Number of Congresspersons Elected, by Gender and Electoral District

Electoral district	Women	Men	Total
Amazonas	0	2	2
Ancash	1	4	5
Apurímac	0	2	2
Arequipa	1	4	5
Ayacucho	1	2	3
Cajamarca	1	4	5
Cusco	0	5	5
Huancavelica	1	1	2
Huánuco	0	3	3
Ica	0	4	4
Junín	0	5	5
La Libertad	2	5	7
Lambayeque	0	5	5
Lima	11	24	35
Loreto	0	3	3
Madre de Dios	0	1	1
Moquegua	0	2	2
Pasco	0	2	2
Piura	1	5	6
Puno	2	3	5
San Martín	0	3	3
Tacna	0	2	2
Tumbes	0	2	2
Callao	1	3	4
Percentage	18%	82%	100%

Source: ONPE 2001.

As can be seen, in only ten of the 25 electoral districts did women win a seat. Moreover, 50 percent (11) of the 22 women elected are from the electoral district of Lima. This suggests the need to build women's leadership locally.

Once again, three women in Lima won the largest number of votes of any candidate from their respective parties: Ana Elena Townsend from Perú Posible, who occupied fifth place on her list;²⁰ Mercedes Cabanillas of the APRA, who was first on her list this time; and Luz Salgado Rubianes: Cambio 90 Nueva Mayoría, who was also first on her list.

Of the 22 women who won seats in Congress, 11 have been re-elected, all in Lima. Thanks to the preferential vote, 41 percent of the women improved their placement in relation to their original places on the list, as compared to 39 percent of the men. Nonetheless, 18 percent of the women candidates saw their position on the list drop, compared to 14 percent of the male candidates. Moreover, 41 percent of the women remained in their assigned place, while 47 percent of the men did not change place.²¹

The 2002 Municipal Elections and the Increase in the Electoral Quota

Law No. 27,734, published in the official gazette *El Peruano* on 28 May 2002, amended the Municipal Elections Law (Law No. 26,864). Among the changes was an amendment to Article 10, providing that the lists of candidates are to be presented in a single document, and must contain:

‘3. The number that indicates the position of the candidates for local council member on the list, which should be made up of at least thirty percent (30%) men or women, and at least fifteen percent (15%) representatives of native communities and indigenous peoples of each province, where they exist, in keeping with the determinations of the National Elections Tribunal.’

By Resolution No. 186-2002-JNE of 11 June 2002, the National Elections Tribunal resolved:

‘Single Article. Establishing the minimum number of male and female candidates who must be on the lists of candidates for members of the municipal councils (provincial and district) of the Republic for the municipal elections of 2002, as follows.’ (See Table 9.)

Table 9: Minimum Number of Male or Female Candidates for Municipal Council Elections

Order	Make-up of the Municipal Council	30% of all candidates	Minimum number of male or female candidates
1	Council with 39 members	11.7	12
2	Council with 15 members	4.5	5
3	Council with 13 members	3.9	4
4	Council with 11 members	3.3	4
5	Council with 9 members	2.7	3
6	Council with 7 members	2.1	3
7	Council with 5 members	1.5	2

Source: Resolution No. 186-2002-JNE, 11 June 2002, National Elections Tribunal.

As illustrated above, in contrast to what happened in the 2001 general elections, and probably due to the complaint lodged with the IACHR, on this occasion, the National Elections Tribunal correctly calculated the minimum quota of 30 percent female candidates.

The Intervention of the Defensoría del Pueblo

'Too many women' as Grounds for Disallowing the Registration of the Electoral List

By Resolution No. 240-2002-JEE/ANDA-J of 28 August 2002, the Special Elections Tribunal of Andahuaylas declared 'null and void and without any legal effect whatsoever' the provisional registration of the list of candidates of the Unidad Nacional for the municipal elections in the province of Chincheros, department of Apurímac. In addition, when an effort was made to bring the list into compliance, it declared the registration of that list 'out of order'. It based its resolution on the failure to abide by the procedural requirements, as it had been noted that there were 'more women council members than provided for in Resolution No. 186-2002-JNE'.

In the context of its electoral supervision work, the Defensoría del Pueblo called on the Special Elections Tribunal of Andahuaylas to amend Resolution No. 240-2002-JEE/ANDA-J, and ordered the definitive registration of the Unidad Nacional list. In addition, it explained that the 30 percent quota is a minimum percentage aimed at fostering the political participation of women.²² The Special Elections Tribunal answered that it had already amended the resolution in question, and had definitively registered the Unidad Nacional list.

Failure to Abide by the Minimum Quota of 30 Percent in the Electoral Lists

In its supervisory work, the Defensoría del Pueblo detected that several lists had been registered that violated the requirement that 30 percent of candidates for local council members be women in the provinces of Tumbes and Zarumilla, and in the district of Matapalo. The Defensoría del Pueblo turned to the Special Elections Tribunal of Tumbes, urging it to adopt the measures necessary for the lists to comply with the minimum number of women candidates required in each case.

The Special Elections Tribunal of Tumbes answered that it had rejected the registration of those lists, and that most of the political parties and movements had presented an appeal to the National Elections Tribunal, which is why it had lost jurisdiction over the lists that failed to include the number of women required by law. These cases were part of a larger body of lists that had not complied with the 30 percent legal minimum, and whose registration had been rejected by the respective special elections tribunals. Part of the problem originated in the scant dissemination and knowledge of the electoral quota.

The National Elections Tribunal rejected the appeals, affirming the ruling of the special elections tribunals that rejected the registration of the lists that had failed to abide by the minimum quota of 30 percent.

The Call Issued by the Defensoría del Pueblo to the National Elections Tribunal

The Defensoría del Pueblo directed a communication to the National Elections Tribunal, proposing a way to resolve the problem that would be most favourable to the right to political participation. The Defensoría del Pueblo proposed the possibility of rectifying, within two days, the failure of some political groupings to comply.

While there is no express provision that establishes that the Special Elections Tribunals can offer a deadline for rectifying the failure to meet the minimum electoral quota, it was fitting to interpret two provisions of the Organic Electoral Law, No. 26,859, applied on a supplementary basis to municipal elections, so as to maximize the impact of the right to political participation, one of whose expressions was the ability to present lists of candidates.

In effect, Article 95 of the Organic Electoral Law indicates with respect to registering lists of signatures of supporters that ‘any flaw in the request for registration may be rectified by order of the National Elections Tribunal’. In addition, Article 118 specifies that, when a candidate appears on two or more lists, he or she has a period of ‘2 (two) calendar days’ to indicate expressly on which list he or she should appear. The last paragraph of that provision adds that, if the list shows the same candidate in more than one place, then the whole list will be void, ‘unless that error is cured in the time period set by law’. Accordingly, an interpretation of such provisions favourable to the right to political participation, in the opinion of the Defensoría del Pueblo, would enable the National Elections Tribunal to set criteria of interpretation to make it possible for such political groupings to rectify the problem within a very short time, which, taking into account Article 118, could be set at two calendar days. Nonetheless, the National Elections Tribunal adopted a different standard.

The Restrictive Interpretation Rendered by the National Elections Tribunal

The National Elections Tribunal ruled favourably on the appeals by the political groupings that failed to comply with the minimum electoral quota. In effect, departing from the standard adopted in Resolution No. 186-2002-JNE, it approved the registration of lists with less than 30 percent women candidates, since they had included the woman candidate for mayor in the calculation. For example, Resolution No. 372-2002, published in the official gazette *El Peruano* on 12 September 2002, reads, in part, as follows:

‘... even though appellant had not complied with the provision of Article 10(3) of Law No. 26,864, in terms of the percentages by gender in the list of candidates for municipal council member, it is also the case that the said percentage does not suffer any change if one adds the woman candidate for mayor to the number of council members ...

... accordingly, departing from the standard established in a prior ruling, in the case of lists in which the candidate for mayor is a woman, and if, adding her to the number of women candidates on the list of candidates for council member the minimum number set in Resolution 186-2002-JNE is attained, then that requirement shall be considered to have been met’.²³

Consequently, several lists that did not comply with the requirement that 30 percent of candidates for municipal council be women nonetheless participated in the elections.

The Lack of Results to Date

On 17 November 2002, municipal and regional elections were held. However, the Jurado Nacional de Elecciones (JNE) (the National Board of Elections) has not yet provided the data from the 125 Special Elections Tribunals, so as to make it possible to assess the impact of the quotas on the municipal elections.

The Regional Elections of 2002

Law No. 27,680, the Law on Constitutional Reform of Chapter XIV of Title IV, on decentralization, published on 7 March 2002, amended Article 191 of the constitution, indicating as follows: 'The law establishes minimum percentages to make accessible the representation of gender, native communities and indigenous peoples on the Regional Councils'. The same treatment is applied to Municipal Councils.

Law No. 27,683, the Law on Regional Elections, published on 15 March, Article 12, on the registration of lists of candidates, provides as follows:

'The list of candidates to the Regional Council should be made up of one candidate from each province, in the order in which the party or movement decides, including one runner-up in each case; also, of no less than thirty per cent (30%) men or women, and at least fifteen per cent (15%) representatives of native communities and indigenous peoples from each region where they exist, as determined by the National Elections Tribunal'.

According to the election laws, the election of regional authorities is by closed and blocked list.

By Resolution No. 185-2002-JNE of 11 June 2002, the National Elections Tribunal resolved 'to establish the minimum number of male or female candidates who must be on the lists of candidates for the Regional Councils of the Republic to be formed for the 2002 regional elections, as follows'. (See Table 10.)

Table 10: Minimum Number of Male or Female Candidates for Regional Council Election Lists

	Regions	Council members for each region	30% of all candidates	Minimum number of male or female candidates
1	Amazonas	7	2.1	3
2	Ancash	20	6	6
3	Apurímac	7	2.1	3
4	Arequipa	8	2.4	3
5	Ayacucho	11	3.3	4
6	Cajamarca	13	3.9	4
7	Cusco	13	3.9	4
8	Huancavelica	7	2.1	3
9	Huánuco	11	3.3	4

10	Ica	7	2.1	3
11	Junín	9	2.7	3
12	La Libertad	12	3.6	4
13	Lambayeque	7	2.1	3
14	Lima	9	2.7	3
15	Loreto	7	2.1	3
16	Madre de Dios	7	2.1	3
17	Moquegua	2.1	2.1	3
18	Pasco	7	2.1	3
19	Piura	8	2.4	3
20	Puno	13	3.9	4
21	San Martín	10	3	3
22	Tacna	7	2.1	3
23	Tumbes	7	2.1	3
24	Ucayali	7	2.1	3
25	Callao	7	2.1	3
Total		228	68.4	84

Source: Resolution No. 185-2002-JNE, 11 June 2002.

As can be seen in Resolution No. 185-2002-JNE, the National Elections Tribunal calculated the 30 percent minimum quota appropriately.

The Restrictive Interpretation by the National Elections Tribunal

Nonetheless, as in the previous case, the National Elections Tribunal allowed lists of council members that only ‘met’ the 30 percent minimum by including the women candidates for regional president and vice-president in the calculation. For example, in Resolution No. 445-2002-JNE, published on 15 September 2002, one reads:

‘Notwithstanding ... non-compliance with the gender percentage referring to candidates for regional council member ... it should be borne in mind that the percentage does not suffer any change if, to the number of council members provided for, one adds woman candidates for president or vice-president’.²⁴

The Participation of Women in Regional Governments

Women accounted for 37 percent of the candidates for regional council members. The percentage of candidates for regional president and vice-president was much lower (seven percent and 15 percent, respectively). (See Table 11.)

Table 11: Candidates in the Regional Lists, by Type of Post

Regional post	Number of women candidates	Total candidates
Regional president	15 (7%)	225
Vice-president	34 (15%)	225
First council member	38 (17%)	225
Council member	756 (37%)	2,048
Total	843 (31%)	2,723

Source: National Elections Tribunal. Prepared by the Civil Rights Program of the Movimiento Manuela Ramos, November 2002.

Women's political participation in the regional governments is reflected in figures provided by the Movimiento Manuela Ramos on the results of the regional elections (see tables 12, 13 and 14).

Table 12: Regional Presidents Elected

Presidents	Number	Percentage
Men	22	88
Women	3	12
Total	25	100

Source: Right to Political and Citizen Participation Program of the Movimiento Manuela Ramos. Prepared by Defensoría del Pueblo.

Table 13: Vice-Presidents Elected

Vice-presidents	Number	Percentage
Men	21	84
Women	4	16
TOTAL	25	100

Source: Right to Political and Citizen Participation Program of the Movimiento Manuela Ramos. Prepared by Defensoría del Pueblo.

Table 14: Council Members Elected in Regional Governments

Council members	Number	Percentage
Men	178	78
Women	50	22
TOTAL	228	100

Source: JNE, January 2003. Prepared by Right to Political and Citizen Participation Program of the Movimiento Manuela Ramos.

Quotas and the Regional System for the Protection of Human Rights

As indicated above, the Defensoría del Pueblo decided to lodge a petition with the IACHR, for failure to comply with the minimum quota of 30 percent in the general elections of 8 April 2001. This non-compliance occurred in three of the 25 electoral districts. In effect, the National Elections Tribunal established a quota of 25 percent in Ica and Callao, and a quota of 28 percent in La Libertad.

The Defensoría del Pueblo and the Movimiento Manuela Ramos submitted the petition in August 2001. The petitioners adduced that the Peruvian state, through the National Elections Tribunal, had breached the following provisions of the American Convention on Human Rights.

1. The right to equality and non-discrimination recognized in Articles 1(1) and 24, to the detriment of the women of Ica, Callao and La Libertad who had the chance of becoming candidates to the national Congress.
2. The right to political participation recognized in Article 23, to the detriment of the citizens referred to above and to the detriment of Katia Chumo García and others who did not have a reasonable number of women among the candidates to be elected.
3. The obligation to respect and ensure the rights recognized in the convention, set forth in Article 1(1).

The Peruvian state responded to the petition by arguing that domestic remedies had not been exhausted, and that:

1. Article 116 of the Organic Electoral Law did not enshrine a quota for women, for the Congress legislated against the exclusive predominance of one or the other gender in the legislative elections; and
2. it was mathematically, legally, and physically impossible to comply with the percentage of 30 percent established in said Article 116.

Given the weak arguments presented by the Peruvian state, the response to its answer was quite simple. According to Article 181 of the constitution, the National Elections Tribunal is the forum of last resort in electoral matters. Historically, women have been excluded from public life, therefore a provision that contains an electoral quota is an affirmative action that necessarily benefits them. Nor was there any legal or mathematical impossibility standing in the way of applying the minimum quota of 30 percent, considering that, with the establishment of a minimum percentage by law, the figure had to be rounded up to the next whole number, to get one more woman candidate, in the electoral districts of Ica, Callao and La Libertad. Finally, the petitioners affirmed that it was not clear what the Peruvian state was referring to in arguing physical 'impossibility', unless it meant that there were not enough women, which was also a false claim.

The petition submitted was admitted with the issuance of Report No. 51/02 on Admissibility, by the IACHR, of 25 October 2002. On 13 January 2003, the Defensoría del Pueblo and the Movimiento Manuela Ramos expressed their willingness to pursue a friendly settlement with the Peruvian state in regard to this case. The hope of the petitioners is that this case can serve as a precedent for respecting electoral quotas in Latin America, considering the different problems that have arisen in the region in connection with the implementation of such affirmative action measures.²⁵

Conclusions

Despite the problems concerning the interpretation of quotas, they have met their objective of increasing the presence of women in public office. Nonetheless, it is to be recommended that the electoral laws on quotas be amended to affirm clearly that they constitute an affirmative action for women. Furthermore, in the case of voting with closed and blocked lists, one should introduce, in addition to the quota, a mechanism to provide for the placement of women on those lists, to ensure that they not be relegated to the last places.

The figures indicate that the larger the electoral district, the larger the number of women elected. However, the multiple district system has shown that it is necessary to work on building local women's leadership, given the number of electoral districts in which not a single woman was elected in the 2001 general elections.

The preferential vote has tended to benefit women, especially those who are national leaders or well-known local leaders. Nonetheless, even though women have come first in terms of the number of votes garnered, and have even won internal elections, they have not always headed up the lists. There is a pressing need for a political party law that, among other things, regulates the mechanisms for constituting the electoral lists, and provides for affirmative action for women within the political parties. A deadline for rectifying non-compliance with the electoral quota needs to be incorporated into the electoral laws, so as to avoid interpretations that restrict the right of women to participate in political life.

It is hoped that the finding of the IACHR that the petition presented by the Defensoría del Pueblo and the Movimiento Manuela Ramos is admissible will set a precedent for gaining respect for electoral quotas in Latin America.

Notes

¹ Article 204 of the 1993 Constitution provides that 'Women with the right to vote in municipal elections may be elected to the Municipal Councils.' Nonetheless, under Law No. 12,391, Articles 84, 86, and 88 of the 1933 Constitution were amended so as to grant women citizenship:

'Single Article. Articles 84, 86, and 88 of the Constitution are replaced by the following: Article 84. Male and female Peruvians of age, those married who are over 18 years of age, and those emancipated are citizens. Article 86. Those citizens who can read and write shall enjoy the right to vote ...'.

² Data from the presentation by Martha Hildebrandt in the Committee on Women's Affairs of the Congress of the Republic, on the proposed law on quotas for the electoral lists.

³ See Report No. 002-DP-DM presented by the Defensoría del Pueblo in relation to Proposed Law No. 2,574/96-CM-CR. See also Yáñez, Ana María. 1998. "Lo que hizo el movimiento de mujeres por las cuotas políticas: un camino que tomó siete años". In *Poder Político con perfume de mujer. Las cuotas en el Perú*, Lima: PROMUJER, (August), pp. 15–20.

⁴ See Resolución Defensorial No. 63–99/DP.

⁵ Law No. 26,859. Article 44: 'The Special Election Tribunals are temporary organs created for each election or popular consultation. The functions of the Special Election Tribunals are those established in the Organic Law on the National Elections Tribunal and in this law'. Law No. 26,486. Article 36(f): 'The Special Election Tribunals shall have the following functions within their respective jurisdiction: To administer, in the first instance, justice in electoral matters'.

⁶ Movimiento Manuela Ramos. 2002. *El Cuarto Femenino*. Year 4, No. 15, (November), p. 46.

⁷ (Movimiento Manuela Ramos). 1999. *El Cuarto Femenino*. Year 1, No. 5, (October), p. 4.

⁸ See Defensoría del Pueblo. 2000. *Elecciones 2000* (supervisory report). (May), Lima: Defensoría del Pueblo.

⁹ Yáñez, Ana María. See the introduction, *El Cuarto Femenino*, March 2000, Year 2, No. 7, p. 3.

¹⁰ *Ibid.*, pp. 4–5.

¹¹ Movimiento Manuela Ramos. 2000. *El Cuarto Femenino*. Year 2, No. 8, (June), p. 15.

¹² *Ibid.*, p. 18.

¹³ *Ibid.*, p. 22.

¹⁴ The case of Mercedes Cabanillas is unique. Even though she won the internal elections in her party, she was not placed first on the list. Cabanillas jumped from fourth to first place, with three times as many votes as Jorge del Castillo, who headed up the list. See Movimiento Manuela Ramos. 2000. *El Cuarto Femenino*. Year 2, No. 7, (March), p. 5.

¹⁵ On the amendments to the Organic Electoral Law, see Movimiento Manuela Ramos. 2000. *El Cuarto Femenino*. Year 2, No. 9, (December).

¹⁶ The Inter-American Commission on Human Rights, in Report No. 119/99 of 6 October 1999 (Case 11,428), noted that the provisions of the Peruvian legal order that provide that the rulings of the National Elections Tribunal 'are final and non-appealable, and are not subject to any review[.] [t]here is no remedy against them', violated the right to simple and prompt recourse, as provided for in Article 25 of the American Convention on Human Rights.

¹⁷ Law No. 26,859, Article 118: 'No candidate, without his or her consent, may be included on a list of candidates for the Congress of the Republic and the Andean Parliament'.

¹⁸ Constitution of 1993, Article 51: 'The Constitution prevails over all statutory provisions, over provisions of lesser rank, and so on. Publication is essential for any provision adopted by the State to enter into force'.

¹⁹ Constitution of 1993, Article 138: 'In any proceeding, if there is an incompatibility between a constitutional provision and a statutory provision, the judges shall accord preference to the first. In addition, they shall prefer the statutory provision over any other provision of lesser rank'.

²⁰ Despite garnering the largest number of votes of any candidate for Perú Posible, Ana Elena Townsend was not elected speaker of the Congress.

²¹ Movimiento Manuela Ramos. 2001. *El Cuarto Femenino*. Year 3, No. 11, (July).

²² Case No. 9918-02 DP-DM.

²³ The Movimiento Manuela Ramos published a compilation of 31 lists in which the woman candidate for mayor was considered in the number that met the 30 percent quota. See Movimiento Manuela Ramos. 2002. *El Cuarto Femenino*. Year 4, No. 15, (November), pp. 48–53.

²⁴ The Movimiento Manuela Ramos published a compilation of four lists in which the candidates for president and vice-president of the region were considered as part of the number that met the 30 percent quota. See Movimiento Manuela Ramos. 2002. *El Cuarto Femenino*. Year 4, No. 15, (November), pp. 53–54.

²⁵ See Villanueva, Rocío. 1999–2000. "Participación política de las mujeres: ¿favor, mérito o ejercicio de derecho? El camino de las cuotas en América Latina." In No. 2. Lima: Defensoría del Pueblo, pp. 37–60.