

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 51/02; Petition 12.404
Session: Hundred and Sixteenth Regular Session (7 – 25 October 2002)
Title/Style of Cause: Janet Espinoza Feria, Luisa Cecilia Castillo Carranza, Kelly Jacqueline Baigorria Acosta, Fanny Ruiz Reyes, Marcela Rodriguez Argomedo, Mercedes Eusevio de Saavedra, Miguel Ascue Nunez, Katia Iliana Chumo Garcia, Benjamin Zevallos Ortiz Drago, Fernando Alberto Garcia Huby, Gloria Boulanger de Castillo, Sandra Escobar de Barayvar, Ruth Vasquez Lopez, Gissela Bouanger Falla, Silvia Rosa Moreno Bocanegra y Juana Zerpa de Velarde, Patricia Rita Zanabria Castillo, Aleida Fidelina Chacaltana, Celso Artemio Cupe, Lastenia Ismelda Aparcana Diaz and Lidia Esperanza Diaz Villacrisis v. Peru

Doc. Type: Decision
Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Commission members: Robert K. Goldman; Julio Prado Vellejo, Clare K. Roberts, Jose Zalaquett.
Pursuant to Article 17(2) of the Rules of Procedure of the IACHR, Commission Member Susana Villaran, a Peruvian national, did not take part in either the discussion or the decision in the instant case.

Dated: 10 October 2002
Citation: Espinoza Feria v. Peru, Petition 12.404, Inter-Am. C.H.R., Report No. 51/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)

Represented by: APPLICANTS: Walter Alban Peralta and Victoria Villanueva Chavez

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On August 2, 2001 Mr. Walter Albán Peralta, as acting Ombudsman, and Ms. Victoria Villanueva Chávez as general coordinator of Movimiento Manuela Ramos (hereinafter "the petitioners") lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission", the "Inter-American Commission" or the "IACHR") alleging violation of the rights to participate in government (Article 23), equal protection (Article 24) and freedom from discrimination (Article 1(1), recognized in the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") by the Republic of Peru (hereinafter the "State", the "Peruvian State", or "Peru") to the detriment of the women candidates to the Congress of the Republic for the Electoral Districts of Callao, Ica and La Libertad and of the voters Katia Iliana Chumo García and others.

2. The petitioners complained that the electoral authorities of Peru, represented by the National Elections Panel, have encouraged gender discrimination with decision No. 068-2001 of

January 22, 2001, which contains a restrictive interpretation of the Elections Act (Law 26859) that sets out, inter alia, the provisions on electoral quotas as an affirmative measure to stimulate female participation in, and access to, electoral processes by establishing a minimum requirement of 30% of female or male candidates. That decision regulated the minimum electoral quotas for the electoral districts of Callao, Ica and La Libertad for the congressional elections of April 2001.

3. The petitioners say that the above decision provided that the District of Ica, entitled to elect four (4) Members of Congress, should have a minimum of one (1) male or female candidate on each list; that the District of La Libertad, entitled to return seven (7) Members of Congress, should have a minimum of two (2) male or female candidates on each list; and that the District of Callao, entitled to elect four (4) Members of Congress, should have a minimum of one (1) male or female candidate on each list. The petitioners and another official body lodged appeals but they were ignored.

4. For its part, the Peruvian State claims that the petitioners have failed to exhaust domestic remedies because they did not attempt a special appeal for nullity [Pedido Atípico de Nulidad de Resoluciones] against that decision before the National Elections Panel, in accordance with the Single Text of Administrative Procedure [Texto Unico de Procedimientos Administrativos (TUPA)] of January 6, 2001, in order that said authority might review the aforementioned decision, and, therefore, they lack standing to act.

5. The State further says that the legal provision on minimum quotas protects men and women indiscriminately, in order to prevent a monopoly by men or women, and that a distinction in favor of women would constitute anti-male discrimination.

6. The State also held that it is a mathematical impossibility to satisfy the above provision because the results in some cases are fractions of numbers, which makes it necessary to round off the decimal to the nearest whole number. Finally, the Peruvian State asserts that it has not violated the Convention in this matter.

7. From its examination of the admissibility of the petition the Commission found that it is competent to take up this case and that same is admissible in accordance with Articles 46 and 47 of the American Convention as regards possible violations of Articles 1(1), 23 and 24 of the American Convention, and it decides to initiate proceedings on the merits of the matter. The Commission further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION.

8. On November 8, 2001, the Commission forwarded the pertinent portions of the petition to the Peruvian state and requested it to provide information within two months, in accordance with Article 30(3) of the Rules of Procedure of the IACHR. On January 10, 2002, the Peruvian state conveyed to the Commission a formal reply together with its respective annexes. On March 15, 2002, the Commission transmitted to the petitioners the pertinent portions of the reply furnished by the State. In a brief of July 3, 2002, the petitioners submitted their comments on

those put forward by the State, and in a note of September 5, 2002, provided additional information to the effect that three of the victims mentioned by them in the petition had links to Movimiento Manuel Ramos. These communications were transmitted to the State on September 11.

III. POSITIONS OF THE PARTIES

A. The Petitioners

9. The petitioners said that in Peru the system of quotas for parliamentary elections was introduced in Article 116 of Law N° 26859 (Elections Act) of September 29, 1997, which provided, “At least 25% of the candidates on congressional lists shall be either women or men.”

10. The petitioners further say that the inclusion of men in this provision was the result of political horse trading in the Congress to placate the usual reluctance toward affirmative action for women, even though prior to the 2001 general elections, quotas

were regarded as an affirmative measure for women both by the political parties and movements, and by the electoral authorities, and were envisaged as such in the original bill.

11. The petitioners say that in consequence thereof, in October 1998 the first municipal elections were held in which the system of quotas was applied, and there was a notable increase in the percentage of women who occupied local government posts throughout the country (for instance the proportion of women municipal council members rose from 7% to 25%). By the same token, in the 2000 parliamentary elections the number of women in Congress went up from 13 to 26.

12. The petitioners say that owing to the success of the measure, in December 2000, at the recommendation of the Ombudsman, Act 27387 was passed amending Article 116 of the Elections Act and raising the quota for women from 25% to 30%.

13. The petitioners claim that in the elections held on April 8, 2001, the organs responsible for dispensation of justice in electoral matters did not abide by the 30% electoral quota in the Electoral Districts of Callao, Ica and La Libertad. That breach materialized in decision N° 068-2001-JNE issued on January 22 by the National Elections Panel, which for these districts provided a low minimum number of either male or female candidates to be included in each electoral list of the groups in contention, given the number of members of Congress for each electoral district.

14. They say that the provision stipulated that for the Electoral District of Ica, which is entitled to return four (4) members of Congress, at least one (1) of the candidates on each list should be male or female; in the Electoral District of La Libertad, entitled to elect seven (7) members of Congress, at least two (2) of the candidates on each list should be male or female; and in the Electoral District of Callao, entitled to elect four (4) members of Congress, at least one (1) of the candidates on each list should be male or female.

15. As a result of the foregoing, in the electoral districts of Ica and Callao the quota was reduced to 25% of the candidates on each list, while in the district of La Libertad it was shortened to 28.5%.

16. In response, the Ombudsman, in a communication dated January 31, 2001 (i.e. prior to the elections), urged the National Elections Panel, as the competent agency for ensuring compliance with the electoral rules, to modify resolution N° 068-2001-JNE, so as to set the minimum number of women candidates for the electoral districts of Ica and Callao at two (2), and for the electoral district of La Libertad at three (3) in accordance with Article 116 of the Elections Act, which provides, "At least 30% of the candidates on congressional lists from each electoral districts shall be either women or men." Similar petitions were submitted to the National Elections Panel by the Chair of the Committee for Women and Human Development of the Congress of the Republic and by the nongovernmental organization Movimiento Manuela Ramos.

17. The response of the National Elections Panel was not to rectify the contested decision but, on the contrary, by decision N° 122-2001-JNE of February 5, 2001, to find the petitions for rectification inadmissible, on the grounds, inter alia, that the electoral laws on minimum quotas for political participation do not refer exclusively to the female sex; that the decision was not discriminatory since the provision seeks to consolidate legal equality between men and women; and that the parties are entitled to participate in elections, the essential requirement for which is free consent.

18. The Ombudsman took the matter up with the Special Elections Panels of each of these electoral districts, as the temporary organs responsible for administration of justice in this area, in order that they might ensure protection of the rights to equality and participation in government recognized in the Constitution and in the Elections Act by examining the lists of candidates submitted by political movements in accordance with the minimum quota requirements and correcting the error as soon as possible.

19. The only Special Elections Panel to reply was that of the judicial district of Ica, which, by a decision of February 9, 2001, decided not to accede to the petition of the Ombudsman; that decision was appealed before the National Elections Panel, which by decision N° 295-2001-JNE of April 4, 2001, found the appeal groundless based on the same arguments that it had used in reply to the previous petitions made to it directly by the Ombudsman and the other two above-mentioned entities.

20. The above discrimination, say the petitioners, was noted in the Preliminary Report of the European Union Electoral Observation Mission on the Elections of April 8, 2001; in the Final Report of the National Democratic Institute/Carter Center (Joint Electoral Observation Project) of July 11, 2001; and was reported by Movimiento Manuela Ramos to the OAS Electoral Observation Mission for the General Elections of the Republic of Peru, 2001.

21. The petition also states that this is a matter of "diffuse interests that pertain to each and every member of a given group, class, or community, though they might not be linked by any legal bond", since it concerns common needs of an indeterminate plurality of persons affected by

a given act, omission, event, or legal provision, with the result that the standing to act before the competent organs becomes that of an *actio popularis*.

22. Accordingly, they say that the above decision of the National Elections Panel affects a diffuse interest of all the women who were potential candidates to the Congress for the electoral districts of Callao, Ica and La Libertad; and that, according to the information of the National Elections Procedures Office (ONPE), the number of eligible women voters and, therefore, potential female candidates for the aforesaid electoral districts is 892,868.

23. The petitioners say that the Ombudsman is the guarantor in the last resort and ensures protection of legally significant events left bereft of judicial recourse, in particular where diffuse interests are concerned.

24. According to the list of additional victims, the petitioners say that the above decision of the National Elections Panel impaired the right to participate in government in the electoral district of La Libertad of Luisa Cecilia Castillo Carranza, Kelly Jacqueline Baigorria Acosta, Fanny Ruíz Reyes, Marcela Rodríguez Argomedo, Mercedes Eusevio de Saavedra, Janet Espinoza Feria and Miguel Ascue Núñez; in the electoral district of Callao of Katia Iliana Chumo García, Benjamín Zevallos Ortíz Drago, Fernando Alberto García Huby, Gloria Boulanger de Castillo, Sandra Escobar de Barayvar, Ruth Vásquez López, Gissela Bouanger Falla, Silvia Rosa Moreno Bocanegra, and Juana Zerpa de Velarde; and in the electoral district of Ica of Patricia Rita Zanabria Castillo, Aleida Fidelina Chacaltana, Celso Artemio Cupe, Lastenia Ismelda Aparcana Díaz, and Lidia Esperanza Díaz Villacrisis.

25. In the additional brief submitted by the petitioners in the proceeding of July 3, 2002, they contend, in response to the observations of the Peruvian State, that domestic remedies were exhausted with the proceeding conducted before the National Elections Panel, saying that a special appeal for nullity [*Pedido Atípico de Nulidad de Resoluciones*] filed with said authority is not an effective remedy, given that in a separate matter that concerned the citizens Edwin Laguerre Gallardo and Ricardo Bissete Pinedo they sought the intervention of the Ombudsman after having attempted such an appeal only for the aforesaid organ to find the appeals inadmissible on the ground that its decisions are not open to review.

26. The petitioners further say that historical fact of the matter in Peru is that the parliamentary lists have always been composed either exclusively or chiefly of men, on which basis the legal provision on quotas is an affirmative measure. Furthermore, the petitioners say, with respect to the argument that it is mathematically impossible to comply with the percentages of the female or male quota when the result is a decimal number, that the decimal should be rounded off to the next whole number.

27. In a letter of September 5, 2002, the General Coordinator of Movimiento Manuela Ramos says, "In the list of victims mentioned in the petition, there are three who were members of Movimiento Manuela Ramos on the date that the Elections Act was violated as regards application of the mechanism for political representation quotas in the lists of congressional candidates, in response to which remedies were attempted until the domestic jurisdiction was exhausted. They are Janet Espinoza Feria, current Coordinator of the Manuela Ramos Regional

Office based in the city of Trujillo, Department of La Libertad, having joined in 1998; Patricia Rita Zanabria, attorney for the Manuela Ramos Social Rights Program, having joined in 1997, and a voter in the electoral district of Ica; and Katia Iliana Chumo García, current Council Member of the Municipality of the Constitutional province of Callao, and member of the network of former students of the International Course on Human Rights held annually by Manuela Ramos.”

B. The State

28. The State has said that the alleged victims or potential women candidates had the possibility to lodge a special appeal for nullity [Pedido Atípico de Nulidad de Resoluciones] with the National Elections Panel, in order for that entity to review its own decision, irrespective of any petitions and appeals presented “by institutions sponsoring the women candidates whose rights were allegedly impaired”, a procedure governed by item N° 40 of the Single Text of Administrative Procedure of the National Elections Panel. Accordingly they had allegedly not exhausted prior procedures and “lacked standing to act, since they have not exhausted the remedies provided under domestic law before resorting to an international proceeding.”

29. The State further holds that Article 116 of the Elections Act, which enshrined the minimum quotas for men or women in the electoral lists of congressional candidates, did not introduce an affirmative measure for women but legislated against the exclusive predominance of either sex in the parliamentary lists, since it would be anti-male discrimination if all the candidates were women.

30. Finally, the State says that it is difficult for the National Elections Panel to comply mathematically with the 30% quota legally established in Article 116 of Act 27859 because, according to the distribution of candidates stipulated in decision N° 069-2001-JNE of January 22, 2001 for each electoral district, and to the electoral roll, it was impossible to determine the precise number of seats to be accorded from the minimum quotas for each electoral district. Accordingly, as a solution, the figure was rounded off to the nearest number, as provided in Article 21 of the Elections Act.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's competence *ratione temporis*, *ratione loci*, *ratione materiae*, and *ratione personae*

31. The Commission is competent *ratione temporis* [by reason of time] to hear this case since, firstly, the petitioner maintains that the Peruvian State incurred in international responsibility through the decision handed down by the National Elections Panel on January 22, 2001, and that this took place after the State had presented its instrument of ratification of the American Convention to the General Secretariat of the Organization of American States on July 28, 1978.

32. Secondly, as regards its *ratione materiae* competence [by reason of subject], the original petition alleges violations of rights enshrined in Articles 1(1), 23 and 24 of the American Convention.

33. The Commission has *ratione loci* competence [by reason of place] to take up this petition because it claims violations of rights protected in the American Convention that allegedly took place in the territory of the State of Peru.

34. Regarding its passive *ratione personae* competence [by reason of the person], the petitioners claim that the violations were committed by a State party, in this case Peru. Regarding its active *ratione personae* competence [by reason of the person], the petitioners claim that said violations were committed to the detriment of Luisa Cecilia Castillo Carranza, Kelly Jacqueline Baigorria Acosta, Fanny Ruíz Reyes, Marcela Rodríguez Argomedo, Mercedes Eusevio de Saavedra, Janet Espinoza Feria, Miguel Ascue Núñez, Katia Iliana Chumo García, Benjamín Zevallos Ortíz Drago, Fernando Alberto García Huby, Gloria Boulangger de Castillo, Sandra Escobar de Barayvar, Ruth Vásquez López, Gissela Bouangger Falla, Silvia Rosa Moreno Bocanegra y Juana Zerpa de Velarde, Patricia Rita Zanabria Castillo, Aleida Fidelina Chacaltana, Celso Artemio Cupe, Lastenia Ismelda Aparcana Díaz, Lidia Esperanza Díaz Villacrisis, direct victims who aspired in their respective electoral districts to elect other women candidates who were prevented from taking part in the elections because the above quota was restrictive, and, furthermore, to the detriment of the 892,868 potential women candidates and women voters in the electoral districts of La Libertad, El Callao and Ica.

35. The Commission notes that one of the co-petitioners, the Ombudsman, says that it is acting in representation in abstracto, inter alia, on the collective behalf of the women who are potential voters in the electoral districts of La Libertad, Callao and Ica, reckoned at 892,868, in the form of an *actio popularis*. That said, the IACHR finds that, pursuant to Articles 44 and related provisions of the Convention and to the jurisprudence of the inter-American system, the petition warrants admissibility in respect of the victims who have been duly individually identified and distinguished, in order to initiate proceedings pursuant to Articles 46 et seq. of the Convention, in accordance with Articles 26 et seq. of the Rules of Procedure of the IACHR.[FN2]

[FN2] The Inter-American Court of Human Rights drew attention to that requirement in Advisory Opinion OC-14/94, paras. 45 to 47, and the IACHR, in a similar case (Case 11.625, María Eugenia Morales Sierra, Report on Admissibility of March 6, 1998) found likewise.

36. For the purposes of admissibility, the IACHR finds that the persons individually identified as victims also represent the unnamed group that the Ombudsman mentions as potential victims.

B. Other admissibility requirements for the petition

a. Exhaustion of domestic remedies

37. The rule contained in Article 46(1)(a) of the Convention, requiring that the remedies offered by domestic law first be pursued and exhausted, stipulates that the substance of all petitions brought before the Commission shall first have been heard by the domestic courts. This rule allows states to resolve disputes under their own legal systems before facing international proceedings. The State has a constitutional or statutory requirement to provide an accessible, effective and possible remedy whereby alleged victims can seek recognition and restoration of their rights before resorting to the inter-American system for protection of human rights. Such procedures should not be mere formalities that, rather than enable the realization of those rights, to the contrary, dilute with time any possibility of success with respect to their assertion, recognition or exercise.

38. In the case at hand, the Commission notes that the petitioners invoked the available domestic remedies against decision N° 068-2001-JNE of January 22, 2001, through petitions presented to the National Elections Panel by the Ombudsman on January 31, 2001, and by Movimiento Manuela Ramos and the Chair of the Committee for Women and Human Development of the Congress of the Republic on February 1, 2001. The National Elections Panel, as the supreme authority for such matters, disposed of those petitions by decision N° 122-2001-JNE of February 5, 2001, in which it found them inadmissible.

39. For its part, the State has claimed failure to exhaust the domestic remedies provided by the Elections Act of that country, whereby the National Elections Panel should have reviewed decision N° 068-2001-JNE of January 4, 2001, the subject matter of the alleged violation.

40. The first point in favor of the above argument is that decision 011-2001-JNE of January 4, 2001, adopted the Single Text of Administrative Procedure of the National Elections Panel, which at item N° 40, provides a procedure called a special appeal for nullity [Pedido Atípico de Nulidad de Resoluciones], which, in the opinion of the State, is applicable since no pre-established mechanism exists to challenge the decision adopted by that supreme authority in electoral matters.[FN3]

[FN3] Item 40 of the Single Text of Administrative Procedure of the National Elections Panel, approved by decision N° 001-2001-JNE, Special Appeal for Nullity of Decisions adopted by the plenary of the National Elections Panel. Requirements: Petition addressed to the President of the JNE and signed by the petitioner. Attach receipt from Banco de la Nación to the order of JNE as proof of payment of 10% of one Tax Unit (UIT) S/. 300.00. Classification: Not regular. Office where the procedure was initiated: JNE Document Processing Office. Decision of the Plenary of the JNE. Authority that rules on the objection.

41. Another aspect of the State's argument against the petition and one connected with the above, is that irrespective of the petitions filed at the time with the National Elections Panel by the petitioners in the instant case, the potential candidates whose rights have allegedly been

violated had the possibility to lodge a special appeal for nullity to request the National Elections Panel to review its decision.

42. The jurisprudence of the Honorable Inter-American Court of Human Rights has found that when a petitioner says that they have exhausted the applicable remedies or that one of the exceptions provided by Article 46 of the Convention applies, "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective." [FN4]

[FN4] Inter-Am.Ct.H.R., Velázquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 88.

43. In the instant case the State has invoked non-exhaustion of the above remedies, saying that the appropriate mechanism under domestic law for challenging the pronouncement of the National Elections Panel was the special appeal for nullity, since, in its opinion, there was no other established mechanism to challenge decision 068-2001-JNE.

44. As the petitioners have said and as is evident from the annexes attached (supra 14), the petitioners in their respective communications, of January 31 and February 1, 2001, stated directly to the National Elections Panel their disagreement with the contents of decision 068-2001-JNE issued by that same authority because they believed that to set a quota of less than 30% for the lists of candidates to the Congress of the Republic for the electoral districts of La Libertad, Callao and Ica, was a violation of Article 116 of the Elections Act (N° 27387).

45. This supreme authority replied to the aforesaid petitions via decision N° 122-2001-JNE of February 5, 2001, finding "the petitions for rectification of decision N° 068-2001-JNE inadmissible," not because these entities lacked legal standing to act or because they were untimely, but because in its judgment the alleged violation had not occurred; in other words, it ruled on the merits of the above petitions. [FN5]

[FN5] See Annex 8 of the petition, Official Gazette El Peruano, Wednesday, February 7, 2001 p. 198287. "Petitions found inadmissible for rectification of decision N° 068-2001.JNE which established the minimum number of women and men for lists of candidates to the Congress of the Republic."

46. However, the Ombudsman also petitioned the separate Special Elections Panels for the districts of La Libertad, Callao and Ica, as the temporary organs responsible for administration of justice in this area, [FN6] requesting that they ensure the rights to equality and participation in government recognized in the Constitution and in the Elections Act by examining the lists of candidates submitted by political movements in accordance with the minimum quota requirements and to correct the error (see supra 16 and 17).

[FN6] Article 34 of Law N° 26859 (Elections Act).

47. The only Special Elections Panel to reply to the petitions was that of the judicial district of Ica, which found the petition untimely because in its opinion its decision had complied with the Elections Act and said that the lists were published in the local newspapers.[FN7] Faced with that decision, the Ombudsman appealed to the National Elections Panel, which, in pronouncing its opinion again on the matter in decision N° 295-2001-JNE of April 3, 2001, found the appeal filed by the Ombudsman to be baseless, and not only reiterated the above-mentioned arguments (see supra 14 and 16), but also referred as a precedent to its previous decision, N° 122-2001-JNE of February 5, 2001, in which it had disposed of the petitions of the Ombudsman, Movimiento Manuela Ramos, and the Chair of the Congressional Committee for Women. This same authority, moreover, found that pursuant to Article 181 of the Constitution and Article 36 of the Organic Law of the National Elections Panel, that decision was final and not open to any appeal whatsoever.[FN8]

[FN7] See Annex 10 of the petition.

[FN8] See Annex 15 of the petition, Official Gazette El Peruano, Wednesday, April 4, 2001 p. 200870. "Appeal filed by Ombudsman against decision of the Special Elections Panel of Ica found baseless."

48. As shown, the petitioners went before the competent authority, namely the National Elections Panel, in order to pursue the procedure recognized in the Elections Act, to which they received a reply on two occasions, with the same basis of opinion and in the same vein, and there was no doubt that there was an error in the petition or in the proceeding attempted. The reply of the State to the effect that the petitioner should have invoked a special appeal for nullity before the National Elections Panel, constitutes the application of a special mechanism or remedy that would be acceptable had there been no other procedure whereby that authority might have had the opportunity to pronounce a decision, as it indeed did so on two occasions.

49. The Commission also finds that pursuant to a constitutional precept (Article 181) the decisions of the National Elections Panel in this area are final and irreversible, which means that they are not subject to review and oversight in terms of their formal aspects or merits by means of any proceeding in the ordinary jurisdiction, such as a contentious administrative proceeding, or via an action for amparo, the latter being an extraordinary remedy to protect constitutional rights. Therefore, the petitioners would not have any other opportunity before the regular state organs to sue for protection of these allegedly violated rights.

50. As to the other argument of the State regarding the petitioners' lack of standing to act because the victims failed directly to seek a remedy in the domestic jurisdiction (special appeal for nullity [Pedido Atípico de Nulidad de Elecciones]), the Commission finds that at the time the petition was lodged three of the alleged victims mentioned therein, Janet Espinoza Feria, Patricia

Rita Zanabria and Katia Iliana Chumo García, were involved in Movimiento Manuela Ramos engaging in different activities in their respective electoral districts.

51. In the opinion of the Commission, when Movimiento Manuela Ramos approached the National Elections Panel to request a review of the aforementioned decision, it acted not only on behalf of the group of women which it claims to represent, but also on behalf of Janet Espinoza Feria, Patricia Rita Zanabria and Katia Iliana Chumo García, who are part of its movement, which shows that the domestic remedy was exhausted.[FN9] While it is true that the other alleged victims did not directly petition this authority nor assert the right to do so, the State has not provided any arguments, valid reasons, or evidence to show that the decision that the National Elections Panel might have reached would have been different to its rulings in the decisions of February 5 and April 3, 2001, when it found inadmissible and baseless the petitions for review of decision 068-2001-JNE of January 22, 2001, or that the reply received would not have been that the petition was inadmissible on the ground that such decisions are not subject to review, as the petitioners say occurred with Messrs. Edwin Laguerre Gallardo and Ricardo Bissete Pinedo in a matter separate to the one at hand. Given that two decisions exist on the same facts as those set forth in the instant petition, the burden is on the State to show that there is a real possibility that a new remedy invoked before the same authority would offer at least some prospect of success.[FN10]

[FN9] Ibid. Case 11.625, María Eugenia Morales Sierra, Report on Admissibility of March 6, 1998.

[FN10] See in this connection European Commission of Human Rights, Appl. 27/55 X v. Federal Republic of Germany, 1978.

52. Based on the foregoing, the Commission reiterates that the remedies available under the domestic laws on electoral matters for the petitioners and the alleged victims to seek the restoration of their rights were satisfactorily exhausted by them. Furthermore, since the proceeding in question is restrictive and offers no possibility of judicial or constitutional oversight, the possibilities have been exhausted whereby the Peruvian State might ensure through its courts the realization of the rights here alleged to have been violated by its agents.

b. Filing period

53. Article 46(1)(b) of the Convention stipulates that for a petition to be admissible, it must be submitted to the Commission within six months of the date on which the petitioner was notified of the final decision. The Commission notes that the final decision was handed down by the National Elections Panel on August 2, 2001. The petition was placed before the Commission within the six-month period. The Commission concludes that this requirement has been met.

c. Duplication of proceedings and res judicata

54. With regard to the requirement in Article 46(1)(c) of the Convention, stating that the petition must not be pending settlement in any other international proceeding, the Commission

has received no information indicating that any such situation exists. The Commission therefore holds that this requirement has been met. In addition, the Commission also concludes that the requirement set forth in Article 47(d) has been met, in that this petition is not substantially the same as any petition already studied by the Commission or ruled on by another international organization.

d. Nature of the violations

55. Article 47(b) of the Convention rules that the Commission shall consider inadmissible any petition or communication that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention." The petitioners have claimed that as a result of decisions handed down by the National Elections Panel, the State has violated the rights to freedom from discrimination (Article 1.1), to participate in government (Article 23), and to equal protection (Article 24), as set forth in the Convention. The Commission believes that the facts alleged by the petitioner, if proven, could constitute violations of rights protected by the American Convention. The Commission therefore concludes that this requirement has been met.

V. CONCLUSIONS

56. The Commission concludes that it is competent to hear this case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

57. Based on the factual and legal arguments given above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards the alleged violations of Articles 1(1), 23 and 24, of the American Convention.
2. To notify the parties of this decision.
3. To continue with its analysis of the merits of the case.
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., the 10th day of the month of October in the year 2002. Signed by Juan Méndez, President; Marta Altolaguirre, First Vice President; Robert K. Goldman; Julio Prado Vellejo, Clare K. Roberts and José Zalaquett, Commission members.