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PERU

OPINION
ON
THE PROPOSED REFORMS
CONCERNING THE PUBLIC PROSECUTOR'S OFFICE

Adopted by the Venice Commission
at its 144th Plenary Session
(Venice, 9-10 October 2025)

On the basis of comments by

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Ms Renata Deskoska (Member, North Macedonia)
Mr James Hamilton (Former Member, Expert)

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I. Introduction

1. By letter of 11 March 2025, Ms Delia Milagros Espinoza Valenzuela, Prosecutor General of Peru (Fiscal de la Nacion) requested an Opinion of the Venice Commission of the Council of Europe on the undergoing reform of the legal framework regulating the powers and activities of the public prosecution in Peru.

2. Mr Rafael Bustos Gisbert (member, Spain), Ms Renata Deskoska (member, North Macedonia) and Mr James Hamilton (expert, former member, Ireland) acted as rapporteurs for this Opinion.

3. From 29 July to 1 August 2025, a delegation of the Commission composed of Mr Rafael Bustos Gisbert, Ms Renata Deskoska and Mr James Hamilton, accompanied by Mr Serguei Kouznetsov from the Secretariat of the Commission travelled to Lima and had meetings with Ms Delia Milagros Espinoza Valenzuela, Prosecutor General of Peru; Ms María del Carmen Alva Prieto, President of the High-Level Multiparty Commission of the Congress tasked with presenting a Proposal for Comprehensive Reform of the Justice Administration System in Peru and members of the Congress; Ms Luz Imelda Pacheco Zerga, President and judges of the Constitutional Court; Ms Janet Tello Guilardi, President of the Judicial Power (Supreme Court); representatives of the OHCHR, UNDP, EU Delegation in Lima, academics as well as with civil society organisations.

4. This Opinion was prepared in reliance on the English translation of the current legislation and draft laws ([CDL-REF\(2025\)042](#) and [CDL-REF\(2025\)043](#)). The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings. Following an exchange of views with Ms María del Carmen Alva Prieto, President of the High-Level Multiparty Commission of the Congress tasked with presenting a Proposal for Comprehensive Reform of the Justice Administration System, it was adopted by the Venice Commission at its 144th Plenary Session (Venice, 9-10 October 2025).

II. Background

A. Factual background

6. The 1979 Constitution of Peru established the Public Ministry of Peru as an independent body from the Ministry of Justice. Article 158 of the 1993 Constitution provides that the institution is autonomous. The Prosecutor's Office plays an important role in protecting the legal order and public interest using its extensive powers, which include, among others, a possibility to carry out investigations against members of the Congress and State officials. The current legal framework of the prosecutorial office in Peru is in general in accordance with international standards, although some aspects of its organisational structure stem from the specifics of Latin American presidential systems, such as impeachment procedures and a highly hierarchical organisational structure. This legal framework appears to be intended to safeguard the independence of the Public Prosecutor's Office and to enable it to perform its duties properly, even in situations where the institutional context and alleged widespread corruption may raise doubts.

7. As has been pointed out in the Opinion on the draft amendment of Article 99 of the Constitution of Peru adopted by the Venice Commission in March 2025,¹ the system of checks and balances enshrined in the 1993 Constitution had ensured the stability of the State institutions for more than 20 years. However, since the 2016 general elections, Peru has had six different presidents resulting from the growing stand-off between the executive and the legislative branches. The country's political instability has significantly increased following the 2021 general elections,

¹ Venice Commission, [CDL-AD\(2025\)007](#) - Peru - Opinion on the draft amendment of Article 99 of the Constitution concerning the impeachment of members of election management bodies.

which had a strong impact on several institutions, notably the judiciary and the Prosecutor's Office. Since the impeachment of President Castillo in 2022, several constitutional² and legislative reforms initiated by the Congress aim at completely reshaping the relations between the judiciary, the Public Prosecutor's Office, and the legislature. The Congress also uses other instruments, such as for example its power to impeach senior judges and Supreme Prosecutors, which could be perceived as an attempt to dismiss them or limit their independence (using Articles 99 and 100 of the Constitution).

8. In recent years, corruption-related investigations opened by the Public Prosecutor's Office concerned the President of Peru, Ms Dina Boluarte, many members of the Congress, as well as other high level State officials. In a highly tense political environment, the extent of powers of the Prosecutor General's Office has been questioned by the legislators. The prosecutors (as well as a number of judges) were accused on a regular basis of inefficiency in performing their duties or of being involved in cases of corruption. This created a climate of mistrust and seriously hindered the operation of the judiciary and prosecutors in the country.

9. The issue of the reform of the judiciary and the Prosecutor's Office has been on the agenda of the Congress (current and previous legislatures) for several years; however, some of the adopted reforms did not manage to address the problem of relations between the judiciary, the prosecution and other State institutions. Several constitutional changes and laws adopted since 2019 did not allow to overcome this institutional crisis.

10. In 2019, the Congress adopted a constitutional reform replacing the National Council of the Magistrature (*Consejo Nacional de la Magistratura*, CNM) with the National Justice Board (*Junta Nacional de Justicia*, JNJ). Since then, the JNJ has been the body in charge of all disciplinary procedures against prosecutors. The members of the JNJ were appointed in 2019. On March 7, 2024, the Congress removed two members of the JNJ citing a disagreement between lawmakers and the board over the interpretation of the law regarding the required age to be a member of the board. A tribunal ordered that the board members be reinstated, citing due process violations.³ The new members appointed in October 2024 have not managed to win the trust of institutions and civil society.⁴

11. In the case of the Prosecutor General's Office the crisis culminated in May 2024, when the then Prosecutor General, Ms Patricia Benavides, was dismissed by the JNJ because she "committed very serious offenses when representing the institution as a whole", notably, by dismissing a prosecutor who was investigating charges against a member of her family. After the dismissal of Ms Benavides,⁵ the Board of Supreme Prosecutors elected from among its members the new Prosecutor General, Ms Delia M. Espinoza Valenzuela, for a three-year term in accordance with Article 37 of the Organic Law - Legislative Decree N°52 on the Public Prosecutor's Office.⁶ In June 2025 the JNJ cancelled the decision to dismiss Ms Benavides and reinstated her on the grounds that the decision had been procedurally incorrect.⁷ This highly controversial reversal of the original decision has been opposed by both the Prosecutor General Delia Espinosa and the Council of Supreme Prosecutors. On 20 September 2025, the JNJ adopted a resolution⁸ to suspend Ms Espinosa Valenzuela for non-execution of its decision concerning Ms Benavides.

² The most important constitutional reform took place in 2023 when Congress (re)established a bicameral system, thus modifying 53 Articles of the Constitution.

³ Constitutional Chamber of the Superior Court of Justice of Lima.

⁴ One of the recent examples illustrates this recurrent problem: on 13 June 2025, the JNJ has tried to reinstate (Decision N° 231-2025-JNJ) the former Prosecutor General, Ms Benavides Vargas.

⁵ Resolution of the JNJ N°6579-2024.

⁶ Decision of the Board of Supreme Prosecutors N°058-2024-MP-FN-JFS.

⁷ Resolution of the JNE N° 063-2025 adopted on 23 June 2025.

⁸ Resolution N°143-025-Pleno-JNJ.

12. In 2024 – 2025, the Congress adopted several laws that affect the powers and the operation of the Public Prosecutor's Office (among others, changes to Law of the Prosecutorial Career (Law 29277), Law of the Judicial Career; the New Criminal Procedural Code, Legislative Decree 957; and the Criminal Code, Legislative Decree 635)⁹, to optimise the administration of justice in the fight against organised crime. Several draft laws proposing to introduce changes to the 1993 Constitution and directly affecting the Prosecutor General's Office, selection of Supreme Prosecutors, their powers and procedures of disciplinary sanctions against them are currently registered and being examined by different Constitutional Committees (Draft Law proposing to reorganise the JNJ and the Prosecutor's Office; Draft Law declaring "emergency" situation in the Public Prosecutor's Office and introducing institutional changes; and Draft Law creating the National school of the judiciary). These different legal initiatives propose diverse measures ranging from fundamental constitutional changes of the system to "immediate" or "temporary" ones. Some of these initiatives are still being discussed in the competent Committees of the Congress.

13. The Prosecutor General publicly expressed an opinion criticising most of these reforms and declaring that these initiatives were aimed at creating mechanisms that would prevent prosecutors from investigating corruption related cases against high level public officials. In response, the Prosecutor General and Public Prosecutor's Office were accused of inefficiency and corruption. Since October 2024, members of the Congress have received 7 constitutional impeachment applications (*acusación constitucional*) against the Prosecutor General alleging breaches of the Constitution in accordance with Articles 99 of the Constitution on impeachment. These complaints are currently being examined by the competent Committees of the Congress.

14. On 11 December 2024, the Congress approved the establishment of a Multiparty Commission tasked with preparing a proposal of a complete reform (*reforma integral*) of the justice system. This Commission approved its working plan in April 2025. This Commission is currently discussing with all highest institutions in the country, including the Prosecutor General, collecting their opinion of the institutions concerned about the possible reforms of the judiciary and the Public Prosecutor's Office.¹⁰

15. The complexity of the political and legal situation in Peru has already been addressed and clarified to some extent by the Venice Commission in its Opinion on the draft amendment to Article 99 of the Constitution.¹¹ This situation has its roots in several serious problems related to the system of checks and balances. Furthermore, absence of clear majority in the Congress, resulting in unclear and unexplained agreements between parties, all amid frequent suspicions of political and parliamentary corruption have a negative impact on the image of different public institutions among the citizens. The proximity of the 12 April 2026 general elections, in which an infrequent coincidence of presidential, legislative, regional and local elections will take place, brings the risk of putting additional pressure on Peru's already weakened institutional framework.

B. Legal background

1. The Constitution

16. In the context of the analysis of the guarantees of independence of prosecutors in Peru, Chapters IX and X of the 1993 Constitution of Peru are of relevance since they lay the structural and normative foundations of judicial and prosecutorial governance.

17. According to Articles 158–160 of the Constitution, the Office of Prosecutor General (Ministerio Público) is an autonomous constitutional body, led by the Prosecutor General (Fiscal de la

⁹ Law N°32182.

¹⁰ See <https://peru21.pe/politica/comision-de-reforma-judicial-hay-consenso-de-cambios/>.

¹¹ Idem, paras from 6 to 9.

Nacion). The Prosecutor General is elected by the Board of Supreme Prosecutors (Article 158 of the Constitution) for a three-year term, renewable once for two more years. Prosecutors enjoy parity of rights, duties, and selection procedures with members of the judiciary.

18. The Office of Prosecutor General has the power to:

- 1) Initiate, ex officio, or at the request of a party, legal action in defence of legality and public interests protected by law.
- 2) Ensure the independence of judicial bodies and the proper administration of justice.
- 3) Represent society in judicial proceedings.
- 4) Conduct the investigation of crimes from the outset. To this end, the National Police is obligated to comply with the mandates of the Public Prosecutor's Office within the scope of its functions.
- 5) Exercise criminal action ex officio or at the request of a party.
- 6) Issue opinions prior to judicial resolutions in cases covered by law.
- 7) Exercise initiative in the creation of laws; and report to Congress or the President of the Republic on any gaps or defects in legislation

19. Budgetary independence of the Prosecutor General's Office is guaranteed under Article 160, which requires that the draft budget of the Office of Prosecutor General, be approved internally by the Board of Supreme Prosecutors and presented to the Executive Power. The budget is then approved by the Executive Branch and by the Congress.

20. Since its adoption, the 1993 Constitution has been amended several times, notably through the 2019 reform, amending Chapter IX, which restructured judicial oversight bodies and the mechanisms for the selection, appointment and evaluation of judges and prosecutors. The reform replaced the National Council of the Magistrature (*Consejo Nacional de la Magistratura*, CNM) with a newly constituted National Justice Board (*Junta Nacional de Justicia*, JNJ).¹²

21. The reform repealed and replaced Articles 154, 155, and 156, transforming both the structure and substance of judicial oversight. A new body, the National Justice Board (JNJ), assumed the functions previously assigned to the CNM, but with significantly expanded and formalised responsibilities.

22. In addition to the role played by the JNJ concerning disciplinary procedures against prosecutors, it is important to mention Articles 99 and 100 of the Constitution concerning the possibility of impeachment against the Supreme Prosecutors in Peru.¹³ Article 99 regulates the impeachment of members of JNJ (previous CNM) and Supreme Prosecutors for violation of the Constitution and for any crime committed in the exercise of their functions and up to five years after they have ceased their functions. Article 100 provides that the Congress can decide whether to suspend an accused official or to declare him ineligible for public service up to 10 years or remove him/her from office without prejudice to any other responsibility.¹⁴

¹² The reform was triggered by a corruption scandal involving members of the National Council of the Magistrature. In 2018, the Congress of the Republic removed all its members from their positions and declared the institution in emergency and suspended it (Law No. 30833). In December 2018 a constitutional reform was approved and entered into force in January 2019 (Law No. 30904).

¹³ See also [CDL-AD\(2025\)007](#), Opinion on the draft amendment of Article 99 of the Constitution of Peru adopted by the Venice Commission at its March 2025 session.

¹⁴ During these proceedings, the accused official has the right to defend himself or to be assisted by a council before the Permanent Committee and Congress as a whole. In case of a criminal indictment, the Prosecutor General files criminal charges with the Supreme Court within five days. The Justice of the Supreme Court charged of criminal affairs then initiates the criminal investigation. Acquittal by the Supreme Court restores the political rights to the accused official. The terms of the Prosecutor's accusation and the order to open proceedings may not go beyond or reduce the terms of the Congress charges.

2. The Organic Law on the Public Prosecutor's Office – Legislative Decree N°52

23. The Organic Law on the Public Prosecutor's Office – (hereinafter, Legislative Decree N°52) defines the role, powers, responsibilities, and ethical obligations of the Public Prosecutor's Office (*Ministerio Público*) in Peru in a very detailed way. It provides a complete framework for the operation of the institution on the basis of constitutional provisions enshrined in Articles 158, 159 and 160.

24. According to Article 36 of the same law, the institutional structure of the Public Prosecutor's Office includes the Prosecutor General, Supreme Prosecutors, Superior Prosecutors, and Provincial Prosecutors. Also forming part of the institutional framework are Deputy Prosecutors, and Boards of Prosecutors, which coordinate prosecutorial functions collectively.

25. The Prosecutor General and the Supreme Prosecutors together constitute the Board of Supreme Prosecutors. The Prosecutor General is elected among its members (Article 37 of the Legislative Decree N°52).

26. The Public Prosecutor's Office includes Supreme Prosecutor's Offices,¹⁵ 2 specialised prosecutor's offices, board of superior and provincial prosecutors, 2 special investigation teams,¹⁶ 34 prosecutorial districts, Office of international judicial co-operation and extraditions and other services.

27. The Law in Article 62 regulates the Board of Supreme Prosecutors, which is chaired by the Prosecutor General. According to Article 97, the Board has the power to approve disciplinary sanctions against prosecutors in concrete cases (para 4), approve the budget (para 5), request the JNJ to dismiss prosecutors (para 6) and to elect a representative of the Public Prosecutor's Office to the National Jury of Elections (para 7). In judicial districts with three or more Senior Prosecutors, they form a Board, led by a President. The same applies to Provincial Prosecutors, forming a single Board in their respective jurisdictions (Article 63).

28. The legal framework regulating different aspects of the work of prosecutors in Peru includes other pieces of legislation, notably the Law No. 30483 on Public Prosecutor's Career; Law No. 27785 - Organic Law of the National Control System and the Comptroller General's Office; Law No. 27658, Framework Law for the Modernisation of State Management; Law N° 24128 creating the Institute of Legal Medicine of Peru "Leonidas Avendaño", as a decentralised public body of the Justice Sector; Supreme Decree N° 004-2019-JUS, which approves the Single Ordered Text of Law N° 27444 on General Administrative Procedure and others.

III. The scope of the Opinion

29. The request made by the Prosecutor General of Peru, Ms Delia M. Espinoza Valenzuela, concerns the existing legal framework and proposed legislation that might affect the autonomy and weaken the institution of the Prosecutor General's Office, notably the current constitutional framework concerning the Public Prosecutor's Office, the organic law on public prosecution,¹⁷ relevant legal acts concerning the appointment, powers and accountability of the prosecutors and the three proposals of constitutional changes currently registered in the Congress of the Republic.

¹⁵ The First Supreme Criminal Prosecutor's Office, the Second Supreme Criminal Prosecutor's Office, the Supreme Family Prosecutor's Office, the First Supreme Specialised Prosecutor's Office for Crimes Committed by Public Officials and the Second Supreme Specialised Prosecutor's Office for Crimes Committed by Public Officials.

¹⁶ These ad hoc teams are in charge of investigation of two major corruption cases – Lava Jato case and White Collars case.

¹⁷ Legislative Decree N°52.

30. The Opinion will focus on the fundamental principles that should be observed when adopting and implementing a comprehensive constitutional reform of the Public Prosecutor's Office, particularly in the context of a political crisis affecting the principle of checks and balances and lack of public trust. The Opinion will refer to recently adopted legislation only in the context of analysis of issues related to the problem of independence of the prosecutors, mechanisms of parliamentary accountability, appointments and oversight by the JNJ and proportionality and legality of disciplinary/criminal liability for prosecutorial acts. This analysis will allow for understanding the problematic issues in the existing legal order that the proposed constitutional reforms address. The relevant legal framework and the proposed constitutional reforms will be assessed in the light of the applicable international standards and relevant Venice Commission opinions concerning the respect for judicial and prosecutorial independence, respect for constitutional stability, issues related to responsibility of prosecutors and sanctions, involvement of judges, prosecutors and other stakeholders in discussions of reforms.

31. Having in mind that following the application by the Prosecutor's Office, some of the laws are being examined by the Constitutional Court of Peru,¹⁸ the Venice Commission reaffirms that the interpretation of the Constitution and its application to the specific case remains the exclusive competence of the Constitutional Court. Accordingly, this Opinion will neither assess the facts of the cases pending before the Constitutional Court nor assess the compatibility of any piece of adopted or draft legislation with the Constitution of Peru.

IV. Applicable international standards

32. Criminal justice systems vary considerably across the world, reflecting distinct legal traditions and institutional structures. As such, there is no single uniform model for all States.¹⁹ The diversity in prosecution systems mirrors the broader diversity of criminal justice frameworks. Nevertheless, it is possible to identify common principles and values shared by virtually all modern systems.²⁰

33. The United Nations Guidelines on the Role of Prosecutors state that States must ensure that prosecutors act without intimidation, undue interference, or unjustified risk of liability for the performance of their duties.²¹ The Inter-American Commission on Human Rights, in its Report on Corruption and Human Rights, has underlined that, given the centrality of the Public Prosecutor's Office in the conduct of criminal proceedings and the fight against corruption, its institutional design must ensure its autonomy, establish appropriate appointment procedures, and guarantee conditions of independence from other branches of government.²² The 2020 report of the Special Rapporteur of the United Nations underlines that "the independence of prosecution services falls within the general scope of judicial independence enshrined in article 10 of the Universal Declaration of Human Rights."²³

34. In Europe, the Advisory Council of European Judges, the Advisory Council of European Prosecutors and the International Union of Judges have stated that prosecutors, like judges, must

¹⁸ Laws on crimes against humanity (Law n° 32107) and Law amending Legislative Decree 1373 on asset forfeiture (Law 32326) adopted in recent months.

¹⁹ [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II- the Prosecution Service, para 7.

²⁰ [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II- the Prosecution Service, para 10.

²¹ United Nations. (1990). Guidelines on the Role of Prosecutors (Principle 4). Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

²² OEA/Ser.L/V/II. Doc. 236, Inter-American Commission on Human Rights (2023). Corruption and Human Rights: Inter-American Standards, para 298. See also Inter-American Commission on Human Rights 2013 Report on Guarantees for the Independence of Justice Officials: Toward Strengthening Access to Justice and the Rule of Law in the Americas, para 37.

²³ A/HRC/44/47, 220 Report of the Special Rapporteur of United Nations on the independence of judges and lawyers. Para. 34.

be and appear independent in the performance of their duties.²⁴ Similarly, the Rome Charter, adopted by the Consultative Council of European Prosecutors (CCPE) in 2014, affirms the principle of prosecutorial *independence and autonomy* and supports the general trend towards strengthening prosecutorial independence in criminal matters.²⁵

35. The Venice Commission recalls that while the independence or autonomy of the prosecutor's office is not as categorical in nature as that of the court, the prosecution service should enjoy autonomy. One of the elements of this autonomy is that the prosecutors must have a security of tenure. As a minimum, a public prosecutor should be protected against arbitrary removal, even by law, which means that the law should specify grounds for early termination of his/her mandate.²⁶ A central element of this "external" independence is the prohibition on executive interference in individual cases, whether directed at the Prosecutor General or other prosecutors.²⁷

36. The report of the UN Special rapporteur on the independence of judges and lawyers pointed out that "in assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of prosecution services and their operational independence and impartiality, or functional independence. A lack of autonomy and functional independence can erode the credibility of the prosecutorial authority and undermine public confidence in the justice system."²⁸ To safeguard against undue influence, States must develop guarantees of non-interference, which include protecting prosecutorial activities from both external pressures and undue internal influence. Such guarantees should cover appointment, discipline/removal but also specific rules for the management of cases and the decision-making process.²⁹

37. The manner in which the Prosecutor General is appointed and recalled plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office.³⁰ The Venice Commission, when assessing different models of appointment of Prosecutor Generals, has always been concerned with finding an appropriate balance between the requirement of *democratic legitimacy* of such appointments, on the one hand, and the requirement of *depoliticisation*, on the other.³¹ Thus, an appointment process which involves the executive and/or legislative branch has the advantage of giving democratic legitimacy to the appointment of the head of the prosecution service. However, in this case, supplementary safeguards are necessary in order to diminish the risk of politicisation of the prosecution office.³² The establishment of a Prosecutorial Council, which would play a key role in the appointment of

²⁴ Bordeaux Declaration: Judges and Prosecutors in a Democratic Society (Article 3), Advisory Council of European Judges, Advisory Council of European Prosecutors & International Union of Judges. (2009).

²⁵ [CDL-AD\(2015\)039](#), Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, para 16.

²⁶ As stressed by the CCPE, "the independence of prosecutors is their protection from arbitrary or politically motivated dismissal. This is particularly relevant with reference to the Prosecutors General and the law should clearly define the conditions of their pre-term dismissal" (the Rome Charter Explanatory Note, p. 73). See [CDL-AD\(2021\)012](#), Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, para 26.

²⁷ [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II- the Prosecution Service, para 30.

²⁸ A/HRC/17/30/Add.3, Report of the Special Rapporteur on the independence of judges and lawyers paras. 16 and 87.

²⁹ [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II- the Prosecution Service, para 32.

³⁰ [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II- the Prosecution Service, para 34.

³¹ [CDL-AD\(2017\)028](#), Poland - Opinion on the Act on the Public Prosecutor's office, para 33

³² [CDL-AD\(2015\)039](#), Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, para 19.

the Prosecutor General, can be considered as one of the most effective modern instruments to achieve this goal.³³

38. According to the Venice Commission's Rule of Law Checklist, there is no common standard on the organisation of the prosecution service, especially about the authority required to appoint public prosecutors, or the internal organisation of the public prosecution service. However, "sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence. In conformity with the principle of legality, the public prosecution service must act only on the basis of, and in accordance with, the law." At the same, "*this does not prevent the law from giving prosecutorial authorities some discretion when deciding whether to initiate a criminal procedure or not (opportunity principle)*".³⁴

39. The question of parliamentary accountability of prosecutors is a delicate and complex issue. It is certainly reasonable that a prosecutor should be answerable for public expenditure and the efficiency of the office, but there is an obvious danger in making a prosecutor answerable for the decisions in relation to individual prosecutions. Not only is there a risk of pressure being considered in relation to particular cases raised in the parliament, but parliamentary accountability may also put indirect pressure on a prosecutor to avoid taking decisions which could be unpopular with the legislature. It would therefore be important to clarify the extent to which the prosecutor is to be accountable to Parliament and for what matters.³⁵ Accountability to Parliament in individual cases of prosecution or non-prosecution should be ruled out. In case the accountability leads to a dismissal procedure, the requirements stemming from the right to a fair trial should be guaranteed.³⁶

40. The Venice Commission has expressed concern over systems that require performance evaluations of prosecutors only every five years, arguing that such infrequent assessments may limit their effectiveness. Comparative practice suggests that regular and constructive evaluations, conducted at shorter intervals, are more conducive to identifying performance issues early, supporting professional development, and strengthening institutional integrity. While safeguarding independence remains paramount, an ongoing performance review process, involving meaningful dialogue between supervisors and prosecutors, better serves both individual and institutional objectives. A more continuous assessment framework would help ensure both the quality and integrity of prosecutorial work.³⁷ It is essential to ensure that any system of assessment is not abused as an indirect means to put improper pressure on a prosecutor.

41. Adequate and independent budgetary guarantees are another crucial pillar of prosecutorial independence. An own budget for the prosecutor's service which is to be approved by the Parliament is an appropriate provision and is a good guarantee for the independence of the prosecutor's service.³⁸

42. Where non-prosecutorial authorities have a power to give general or specific instructions to prosecutors such instructions should be transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

³³ [CDL-AD\(2015\)039](#), Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, para 20.

³⁴ [CDL-AD\(2016\)007](#), Rule of Law Checklist, para 91. See also [CDL-AD\(2010\)040](#), paras 7,43 and 53.

³⁵ [CDL-AD\(2007\)011](#), para 25.

³⁶ [CDL-AD\(2017\)013](#), Opinion on the draft revised Constitution of Georgia, para 82.

³⁷ [CDL-AD\(2008\)019](#), Opinion on the draft law on the Public Prosecutors' service of Moldova, para 46.

³⁸ [CDL-AD\(2008\)019](#), Opinion on the draft law on the Public Prosecutors' service of Moldova, para 69.

43. International cooperation plays an important role in exchanging experience and good practices between national prosecutorial services. The 2020 report of the UN Special Rapporteur on the independence of judges and lawyers provides that independence and integrity are established in the UN Convention on fight against corruption “as components that are essential to ensuring viable cooperation among States to investigate and punish corruption.”³⁹ It is also important in terms of mutual assistance in cases of international judicial cooperation. For example, the Opinion No.9 (The “Rome Charter” adopted in 2014) of the Consultative Council of European Prosecutors (CCPE) recommends that “mutual and fair cooperation is essential for the effectiveness of the prosecution service at national and at international level, between different prosecution offices, as well as between prosecutors belonging to the same office.”⁴⁰

V. Analysis

A. General remarks

44. The existing constitutional and legal framework for the Prosecutor General’s Office in Peru is very detailed and provides a clear framework for the operation of the institution. It presents some specific features proper to Latin American presidential systems which include, among other elements, the possibility of impeachment procedures against State officials (including Supreme Prosecutors) and a highly hierarchical organisation of the Public Prosecutor’s Office. The institutional autonomy of the Prosecutor General’s Office is guaranteed at the constitutional level and the political powers, until recently, had neither intervened in the process of nomination of the prosecutors, nor interfered with their power to open and to investigate concrete cases.

45. Since the impeachment of President Castillo in 2022, cases of constitutional accusations or disciplinary procedures against prosecutors dealing with high profile corruption-related cases have become more frequent.⁴¹ Despite the very extensive list of guarantees providing for the independence of the judiciary and the prosecution, pressure has been put on both the judiciary and the prosecution through a combination of numerous constitutional reform initiatives, changes to secondary legislation aimed at reducing their powers and frequent use of impeachment procedures against Supreme judges and prosecutors. These actions, apart from institutional pressure, produce a negative impact on public opinion and undermine trust in the judiciary and Public Prosecutor’s Office.

B. Guarantees for the independence of prosecutors

46. Article 158 of the Constitution states that the Public Prosecutor’s Office is autonomous. Article 5 of the Legislative Decree N° 52 on the Public Prosecutor’s Office⁴² guarantees its functional autonomy stating that prosecutors act independently in fulfilling their responsibilities, guided by their own judgment in service of institutional aims.

47. Article 159 para 1 of the Constitution provides that the Public Prosecutor’s Office “takes legal action in defence of legality and public interests protected by law” and in para 4 of the same Article “conducts the investigation of crimes from the outset.” In its investigative function, the Public Prosecutor’s Office exercises early intervention during the police phase of investigation (Article 9 of the Legislative Decree N°52). In accordance with the provisions of the law, prosecutors guide and oversee police investigations to ensure legal compliance and secure evidence necessary for the effective exercise of criminal action. It is the Prosecutor, who has to

³⁹ United Nations, A/HRC/44/47, para 36.

⁴⁰ Opinion No.9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors adopted on 17 December 2014. Par XX.

⁴¹ OECD, “Peru must enhance protection for prosecutors and judges against potential political interference,” says OECD Working Group on Bribery following High-Level Mission in Lima, 22 January 2025.

⁴² Organic Law No. 23230, Legislative Decree No. 052.

immediately ensure that detainees are afforded constitutional protections, including access to legal defence, upon being notified of their detention (Article 10 of the Legislative Decree 52).

48. In 2024, the Congress adopted Law 32130, which modifies among other legal acts, Article 321 of the Criminal Procedure Code providing that “the preliminary investigation is divided into two substages: the preliminary investigation conducted by the Peruvian National Police under the “legal guidance” of the Public Prosecutor’s Office, and the second formalised preliminary investigation conducted by the Public Prosecutor’s Office with the support of the Peruvian National Police.” Articles 322 and 330 of the Code of Criminal Procedure again refer to the legal guidance of the Public Prosecutor’s Office but entrust the preliminary investigation to the Police. This reform delegates an important function related to the prosecution of crimes to an entity which is part of the executive branch. While noting that after the adoption of Law 32130, the Public Prosecutor’s Office had expressed the opinion that it could affect the functional autonomy of the prosecutors, the Commission understands that in the meantime the Constitutional Court of Peru has confirmed in its decision the compatibility of Law 32130 with Article 154 para 4 of the Constitution.⁴³

49. The UN Guidelines on the Role of Prosecutors on standards on the prosecutor’s involvement in criminal proceedings provide that “Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.”⁴⁴ The Venice Commission is of opinion that the provisions of the Law 32130 do not meet these criteria to the extent that the prosecutors cannot supervise the legality of the preliminary investigations by the police.

50. Law N° 32182 adopted in December 2024 introduced disciplinary and even criminal responsibility for prosecutors/judges based on their evaluation of evidence, risk, and procedural conditions. At the heart of the reform lies the perceived laxity with which some prosecutors and judges have handled cases involving individuals apprehended in flagrante delicto for serious crimes—offenses carrying penalties of more than five years of imprisonment. The Inter-American Commission on Human Rights recommends that “States should refrain from establishing disciplinary grounds on actions related to the trial or legal test developed by justice operators in their decisions.”⁴⁵ According to Council of Europe standards,⁴⁶ prosecutors must not be penalised for decisions made in good faith, even if such decisions are controversial or later overturned.

51. The approach taken by the Law to the role of the prosecutors in the mandatory detention of persons committing serious crimes in flagrante delicto raises concern. For example, the ECtHR adopted a position that pre-trial detention must never be automatic, even in *flagrante delicto* or

⁴³ Constitutional Court, EXP 00006-2024-PI and 00014-2024-PI.

⁴⁴ United Nations. (1990). Guidelines on the Role of Prosecutors (Principle 11). Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. See also [CDL-AD\(2008\)019](#), Opinion on the draft law on the Public Prosecutors’ service of Moldova, para 24; [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, para 45.

⁴⁵ Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas (2013, OAS official records; OEA/Ser.L). Recommendation 22: “Ensure the rule of law in disciplinary grounds used to sanction justice operators. In this regard, the conduct that may result in the imposition of disciplinary measures need to be specified in detail, including the seriousness of the offense and the type of disciplinary action to be applied. States should refrain from establishing disciplinary grounds on actions related to the trial or legal test developed by justice operators in their decisions.”

⁴⁶ CM/Rec(2000)19 Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system: “11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability.”

serious crimes and each decision must be individualised, based on concrete evidence of flight risk, interference with justice, or risk of reoffending. Law N° 32182 assumes that pre-trial detention should follow automatically in certain cases (e.g., serious crimes in flagrante delicto) and sanctions prosecutors/judges who do not request or order it - violating the principle that detention is the exception, not the rule. In the final analysis the decision whether a crime has been committed in flagrante delicto must be one for the prosecutor and the judge to decide and not for the executive branch or the legislature. The Venice Commission is of the opinion that this provision would not only violate the rights of the detainees but also affect the independence of prosecutors in conducting an investigation and should be reconsidered.⁴⁷

52. Law No. 32182 contains an extraordinary procedure making it a “serious misconduct” for a prosecutor to order the release of persons arrested in flagrante delicto by the national police. The effect of this provision could lead to a situation where the police is placed above the prosecutor notwithstanding Article 158 para 4 of the Constitution of Peru, which provides that the national police are obliged to enforce the orders of the Office of Prosecutor General and Article 9 of the Legislative Decree N°52 envisaging the right of the Prosecutor to supervise and oversee the police. Even where a person is found apparently in the act of committing an offence, questions may arise as to the existence or extent of criminal liability for the act in question. The power to evaluate the “gravity” of an offence resides with an independent judge and prosecution and not the police. The Venice Commission considers that the concept of “serious misconduct” is vague and represents a threat to the power of the prosecutor to conduct investigation in an independent manner.

53. These recently adopted laws reduce the powers of prosecutors and increase the risks of “*unjustified interference*” in the exercise of their professional duties. The involvement of prosecutors at a later stage of investigation puts at risk the quality of the investigation. The Venice Commission is of the opinion that “if the prosecutors do not have any influence on the investigation from the start, a certain number of cases may be rejected due to errors committed in the first hours or days of the investigation.”⁴⁸ Furthermore, the belated involvement of the prosecution risks delaying the immediate investigation of violations of individual rights.⁴⁹

C. Parliamentary accountability and procedural safeguards

54. While prosecutorial independence is essential, it must be balanced with accountability mechanisms, particularly concerning institutional performance, fight against corruption and use of public resources. Specific instruments of accountability are necessary in cases where the prosecutor’s office is independent. The submitting of public reports by the Prosecutor General could be one such instrument. Guidelines for the exercise of the prosecutorial function and codes of ethics for prosecutors also play an important role in standard setting.⁵⁰

55. International standards allow for institutional accountability of prosecution services, including budgetary and general performance oversight by Parliament, but exclude accountability for individual prosecutorial decisions to prevent political pressure.

⁴⁷ See [CDL-AD\(2015\)005](#), Moldova - Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, para 32 and [CDL-AD\(2008\)019](#), Moldova - Opinion on the draft law on the Public Prosecutors’ service of Moldova, para 24.

⁴⁸ [CDL-AD\(2019\)006](#) Georgia - Opinion on the concept of the legislative amendments to the Criminal procedure code concerning the relationship between the prosecution and the investigators, paras 37-38 and 41.

⁴⁹ The Inter-American Court has emphasised in its case law that investigations into human rights violations must be immediate and thorough, but they must be independent and impartial as well. See among others, Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paras. 132 and 133.

⁵⁰ Idem, para 44.

56. In Peru, Articles 99 and 100 of the Constitution allow for impeachment and removal of high-ranking officials, including Supreme Prosecutors and members of the JNJ, by the Congress for violations of the Constitution or crimes committed during or shortly after their term. The process includes procedural rights for the accused, such as a hearing before Congress.

57. In addition, Article 157 of the Constitution provides that “the members of the JNJ may be removed from their offices by a decision of the Congress⁵¹ due to a serious misdemeanor, with the affirmative votes of two-thirds of its members.”⁵²

58. The removal by the Congress of members of the Judiciary, Supreme Prosecutors and members of the JNJ presents three major problems: right to due process, protection of prosecutors against external pressure and the right to access to public office.

59. The first one is related to the respect of the right to due process. The Congress must respect guarantees of due process in parliamentary proceedings. The Inter-American Court of Human Rights has indicated that “the set of minimum guarantees is not limited to criminal matters, but on the contrary, must be observed in civil, labor, fiscal, or any other procedural instances, so that people can adequately defend themselves against any type of act emanating from the State that may affect their rights and obligations.”⁵³ It can be concluded that whenever the State in general, and Congress in this particular, is going to make a decision that implies the exercise of sanctioning/punitive power that affects rights or establishes obligations, the guarantees of due process must be applied.

60. The second problem concerns the impact of impeachment procedures on the independence of the prosecutors. The Venice Commission reasoned in its Opinion on the draft amendments of Article 99 of the Constitution concerning the impeachment of members of election management bodies that the procedure of impeachment could represent a threat to the principle of the independence of the public prosecutor and bears a risk of making the position of prosecutor dependent on a political body.⁵⁴ The Prosecutor General and members of JNJ should not be subject to political impeachment, because it exposes them to undue (and as latest practice shows frequent) interference by the parliament and has a direct impact on the investigations.⁵⁵ Moreover, consideration should be given to the impact the procedure of impeachment has on the investigations on corruption of high ranking officials by the Prosecutor General's Office. According to the Rules of Procedure of the Congress, the constitutional accusation complaint can be filed by members of the Congress, Prosecutor General or “any person directly concerned.”⁵⁶

61. The third problem concerns the right of access to public office. Article 23 para 1 of the American Convention on Human Rights guarantees the right of every citizen “to have access to under general conditions of equality, to the public service of his country”. For the Inter-American Court of Human Rights this right is respected when “the criteria and procedures for appointment, promotion, suspension and dismissal are reasonable and objective”⁵⁷ The Venice Commission has already stated that it considers that “the notion of “violation of the constitution” on which the

⁵¹ After the parliamentary elections that are to take place in April 2026, this power will be exercised by the Senate of the new bicameral parliament. Article modified by the Law N°30904, published on 10 January 2019.

⁵² Constitución Política del Peru, Decimonovena Edición Oficial, 2024.

⁵³ Inter-American Court of Human Rights, Case of the Constitutional Court v. Peru, paras 69-70.

⁵⁴ In 2023, The Inter-American Commission on Human Rights (IACHR) has expressed the same concern regarding the constitutional accusations against justice operators in Peru and urged the Peruvian State « to establish clear and objective parameters for the application of Article 99 of the Political Constitution of Peru. » OAS, Press releases, 2023. 129.

⁵⁵ Article 89 of the Rules of Procedure. Reglamento del Congreso de la Republica. Edición oficial. Noviembre 2023.

⁵⁶ Article 89 of the Rules of Procedure. Reglamento del Congreso de la Republica. Edición oficial. Noviembre 2023.

⁵⁷ Inter-american Court of Human Rights Case Apitz Barbera and others v. Venezuela, par. 206. See also United Nations. Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán (A/77/160).

juicio político is based is extremely vague, and as such could be interpreted in a very subjective manner. It may be interpreted in a nonpredictable manner using generally worded arguments such as ‘unreasonable’, ‘illegal’, ‘unconstitutional’ not being explained in more detail; or the political reasons used by considering only one of the applicable constitutional or legal principles.”⁵⁸

62. The recommendations of the previous Opinion of the Venice Commission concerning the conditions that may lead to impeachment are equally valid in the case of Superior Prosecutors and members of JNJ. As recommended in the Opinion in any proceedings of this nature, there should be: clear grounds of serious disciplinary offences that are clearly, restrictively and exhaustively set out in the law; a fair trial, with the right to submit evidence and right to be heard; the investigating body must be non-partisan and non-political; any investigation should be carried out by an institution that is separate and distinct from the one which decides on the dismissal; such decision should be reasoned; and a possibility to appeal to a court of final jurisdiction within a reasonable time-limit. However, considering the high risk of politicisation of the impeachment procedures foreseen in Articles 99 and 100 of the Constitution of Peru, the Venice Commission invites the Congress to reconsider this mechanism in the proposals of constitutional reform that are currently being prepared by the Multiparty Commission tasked with preparing a proposal of a complete reform (*reforma integral*) of the justice system.

D. The JNJ and its role in appointment and oversight of the prosecutors

63. The JNJ plays a crucial role in appointment and oversight of the work of the prosecutors as provided in Article 154 of the Constitution. Pursuant to the Legislative Decree N°52 on the Public Prosecutor's Office, Supreme and Superior Prosecutors are appointed by the JNJ. According to Article 154.2 of the Constitution and Article 2 of the Organic Law on JNJ, it appoints all judges and prosecutors at all levels, ratifies every 7 years the powers of judges and prosecutors, evaluates their performance every 3,5 years, suspends Supreme Prosecutors and dismisses prosecutors (titular and provisional) of all levels.⁵⁹

64. Revised Article 155 of the Constitution introduced a new model for the selection of the seven members of JNJ, administered by a Special Commission, composed of high-ranking state and academic officials: the Ombudsman (chair); the President of the Judiciary (President of the Supreme Court); the Prosecutor General; the President of the Constitutional Court; the Comptroller General; one public university rector (licensed and with over 50 years of operation); one private university rector (meeting the same criteria).

65. The selection process, conducted six months prior to the end of the JNJ's term, is supported by a Specialised Technical Secretariat and must guarantee probity, impartiality, publicity, and transparency. The members are elected for a period of five years, without right to re-election. Members of the JNJ enjoy the same benefits and are bound by the same obligations and incompatibilities as Supreme Court justices. They are barred from engaging in any other public or private activity—except for university teaching—and must refrain from any conflict of interest.

66. In the case of Peru, the JNJ is a single body which handles the matters for judges and prosecutors alike. The Venice Commission has previously recommended envisaging, at least at legislative level, setting up two separate sections within each chamber (as well as in the Inspector Board), deciding respectively on judicial and prosecutorial matters, where the majority of members is represented by the relevant category.⁶⁰ This option could be considered in Peru

⁵⁸ [CDL-AD\(2025\)007](#), Peru - Opinion on the draft amendment of Article 99 of the Constitution concerning the impeachment of election management bodies, para 92.

⁵⁹ Organic Law on the National Justice Board N° 30916.

⁶⁰ [CDL-AD\(2024\)041](#), Opinion on the Composition of the Council of Judges and Prosecutors and the Procedure for the election of its members in Türkiye, para 70.

during the preparation of the “integral reform” of the judiciary and prosecutorial service currently prepared by the High-Level Multiparty Commission of the Congress tasked with presenting a Proposal for Comprehensive Reform of the Justice Administration System in Peru.

67. The Venice Commission has already stressed that regarding prosecutorial councils, international standards are scarce; however, as recalled above, sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence as well as inside the prosecution service. The concerns relating to the judiciary apply, *mutatis mutandis*, to the prosecutorial service. This is particularly true in those systems characterised by the unity of the magistracy in one body⁶¹ as it is the case of JNJ.

68. The Venice Commission has always promoted the balanced composition of Judicial Councils. In respect of the composition of such Councils, the Venice Commission recommended that alongside lay members at least half of their members should be judges elected or appointed by their peers. In its Opinions (most notably, on Chile⁶², Serbia⁶³ and France), the Commission has made reference to the standard set in this respect by the Committee of Ministers of the Council of Europe, i.e. that “not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with the respect of pluralism inside the judiciary”. The fact that all members of JNJ in Peru are lay members, with no representation of judges or prosecutors, and with no opportunity for the judiciary or prosecution service to elect their peers, raises concerns about the existence of mechanisms for the protection of prosecutorial autonomy. While it is true that the JNJ is elected by a Special Commission composed of non-political actors, namely the President of the Constitutional Court, the President of the Supreme Court, the Public Prosecutor, the Ombudsperson, the Comptroller General, the President of the Board of Deans of the Bar Associations, and the Rector of a public university elected by the rectors of all public universities - this structure, although designed to avoid political interference, does not compensate for the complete exclusion of judges and prosecutors from JNJ membership or from electing at least half of its members.⁶⁴

69. The Venice Commission has underscored that members of judicial and prosecutorial councils should enjoy security of tenure and functional immunity as key safeguard of their independence.⁶⁵ In light of the principle of security of tenure, it is essential to specify the substantive grounds for termination of office and introduce adequate procedural safeguards in the relevant proceedings against JNJ members. The JNJ members should enjoy security of tenure, as well as strong safeguards setting clear and limited grounds for sanction and dismissal.

70. According to Article 154, para 3 of the Constitution of Peru, the JNJ has the authority to apply disciplinary sanctions, including the sanction of destitution, to judges of the Supreme Court and to Supreme Prosecutors. It may also initiate such proceedings ex officio or at the request of the Supreme Court or the Board of Supreme Prosecutors against judges and prosecutors at all levels. In the case of supreme judges and Supreme Prosecutors, the JNJ is further empowered to impose lesser sanctions such as a reprimand or suspension of up to

⁶¹ [CDL-AD\(2024\)041](#), Opinion on the Composition of the Council of Judges and Prosecutors and the Procedure for the election of its members in Türkiye, para 29.

⁶² [CDL-AD\(2025\)021](#), Chile, Opinion on the draft Constitutional amendments in respect of the judiciary.

⁶³ [CDL-AD\(2021\)032](#), Serbia, Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, para. 64; and [CDL-AD\(2022\)030](#), Serbia, Opinion on three draft laws implementing the constitutional amendments on Judiciary, para 71.

⁶⁴ Prior to the constitutional reform of 2019 creating the JNJ, the former National Council for Magistracy was constitutionally entrusted with the appointment, confirmation, and disciplinary functions in respect of judges and prosecutors (former Article 154). It was composed of seven members elected: one by the Supreme Court; one by the Board of Supreme Prosecutors; one by the National Bar Associations; two by professional associations; one by rectors of public universities; one by rectors of private universities. Members served five-year terms, together with their designated substitutes.

⁶⁵ Venice Commission, [CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, para 59.

120 calendar days, based on considerations of reasonableness and proportionality. The provision further states that the final decision must be reasoned and issued following a hearing of the affected individual. However, it explicitly stipulates that such a final resolution is not subject to challenge (*naturaleza inimpugnable*).

71. The exclusion of the right to challenge the disciplinary decisions of the JNJ raises concerns considering international and regional standards. One of the fundamental guarantees of the right to a fair process is the right to a judicial remedy.⁶⁶ This is particularly vital in the context of disciplinary proceedings involving judges and prosecutors, where sanctions such as dismissal or suspension have direct implications on institutional independence and personal rights. In the case of Peru this lack of appeal mechanisms has had a negative impact on the functioning of the Public Prosecutor's Office, creating conflicts within the institution and affecting the quality of investigations carried out by the prosecutors in such crucial fields as the fight against the organised crime and corruption.

72. International instruments and bodies have consistently affirmed this principle. The United Nations Basic Principles on the Independence of the Judiciary provide that decisions in disciplinary, suspension, or removal proceedings should be subject to an independent review.⁶⁷ For example, the Inter-American Court has written that the State's obligations with respect to those facing prosecution create "rights for judges"; for example, the guarantee that they will not be subject to a discretionary removal implies that the disciplinary proceedings and sentencing proceedings in cases involving judges must necessarily respect the guarantees of due process and shall offer those affected an effective remedy.⁶⁸ The United Nations Guidelines on the Role of Prosecutors provide that decisions in disciplinary proceedings against prosecutors shall be subject to independent review.⁶⁹ In Europe, The ECtHR has ruled that where the disciplinary body does not provide sufficient guarantees of independence, a judicial remedy should be provided against its decisions.⁷⁰ The Consultative Council of European Prosecutors (CCPE) has equally underlined the right of prosecutors to appeal disciplinary sanctions, as part of the broader guarantees of due process.⁷¹

73. Considering these standards and having regard to the shortcomings of the composition of the JNJ (para 68 above), the constitutional provision in Peru denying judicial review of the JNJ's disciplinary resolutions appears to be incompatible with the requirements of procedural fairness and institutional safeguards. The absence of any mechanism to challenge the legality, proportionality, or factual basis of a disciplinary decision risks undermining both individual rights and the integrity of the judicial and prosecutorial professions. It further creates the potential for arbitrary or politically influenced sanctions, with no possibility of correction or external oversight.

⁶⁶ Venice Commission, Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, ([CDL-AD\(2007\)009](#)) para 9.

⁶⁷ The (UN) Basic Principles on the Independence of the Judiciary, 1985, Principle 20 - Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

⁶⁸ InterAmerican Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 147.

⁶⁹ United Nations. (1990). Guidelines on the Role of Prosecutors, Principle 21:

"Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review."

⁷⁰ ECtHR, Ramos Nunes de Carvalho v Portugal (GC).

⁷¹ CCPE Opinion No. 19 (2024) on managing prosecution services to ensure their independence and impartiality, para. 60: "disciplinary proceedings against prosecutors or staff of the prosecution services are governed by national legal systems, in order to guarantee a fair and objective assessment and decision which should be subject to independent judicial review".

74. Prosecutors are held accountable not only for direct violations of the provisions of the Law on activities incompatible with their status but also for any conduct that undermines their professional reputation or public trust. The Venice Commission favours specific and detailed description of grounds for disciplinary proceedings, whereas it recognised that, to a certain degree, it is unavoidable that a legislator uses open-ended formulas in order to ensure the necessary flexibility.⁷² For example, the ECtHR found that in the absence of practice, domestic law needs to establish guidelines concerning vague notions to prevent arbitrary application of the relevant provisions: “the absence of any guidelines and practice establishing a consistent and restrictive interpretation of the offence of “breach of oath” and the lack of appropriate legal safeguards resulted in the relevant provisions of domestic law being unforeseeable as to their effects.”⁷³ The Venice Commission has considered the notions “of duties of the office, honour, courtesy and dignity” excessively general and vague.⁷⁴

75. In light of the above, the Venice Commission considers that the notion of “conduct that undermines their professional reputation or public trust” contained in Article 22 of the Legislative Decree N°52, is excessively general and vague. It therefore recommends rewording Article 22 to define in more complete and concrete manner the conduct that can lead toward disciplinary responsibility of the prosecutors.

76. The Venice Commission recommends that disciplinary decisions related to the career of prosecutors issued by the JNJ, whether involving dismissal, suspension, or reprimand, be subject to review by an independent judicial body.

E. Analysis of the proposals for constitutional changes

77. The Prosecutor General of Peru asked the Venice Commission to provide an Opinion on the draft amendments to the Constitution affecting the prosecutorial office. This Opinion will focus on three sets of proposals of constitutional reforms currently registered in the Congress:

- 1) Proposal 6816/2023-CR. Constitutional reform Act establishing the National School for Judges and Prosecutors, which elevates the National Control Authority for Judges and the Prosecutors to the constitutional level and creates the Inter-Institutional Coordinating Council of the Justice System, amending Articles 142, 144, 150 – 158, 178, 182 and 183 of the Political Constitution of Peru.
- 2) Proposal 07139/2023 – CR. Act declaring the Prosecutor General’s Office in a state of emergency and establishing extraordinary measures for its institutional reorganisation.
- 3) Proposal 0840/2023-CR. Constitutional reform law declaring the National Board of Justice and the Public Prosecutor’s Office in process of reorganisation repealing subsection 2 of Article 154 of the Constitution.

78. A preliminary motion was made to return the first draft proposal to the Committee on Justice and Human Rights for further evaluation (the motion is still pending). The second proposal is currently pending at the Committee on Constitution and Rules and the Committee on Justice and Human Rights (since 29 February 2024). The third draft is pending before the Committee on Constitution and rules (since 5 June 2024).

79. These texts vary greatly in terms of their content and scope. Firstly, they aim to reform not only the Public Prosecutor’s Office, but also the judiciary. Secondly, the approaches to the reform

⁷² [CDL-AD\(2023\)015](#), Joint Opinion of the Venice Commission and the DGI of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures in France, para 56.

⁷³ ECtHR, Oleksandr Volkov v Ukraine, 9.01.2013, App. No. 21722/11, para. 185,

⁷⁴ [CDL-AD\(2023\)015](#), Joint Opinion of the Venice Commission and the DGI of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures in France, para 59.

of the Prosecutors' Office set out in the texts differ significantly from one another. Draft 6816/2023-CR proposes to establish a completely new single body in charge of the administration, selection, training, evaluation, and appointment of judges and prosecutors at all levels for both the judiciary and the Public Prosecutor's Office, based on a new judicial school. The other two proposals of constitutional reforms might limit the independence of the Public Prosecutor's Office (and, to a certain extent, the judiciary), even replacing all acting Supreme Prosecutors without following the constitutional rules regarding this matter. Considering that there is a specific parliamentary commission working on the reform that has not yet completed its work, the current Opinion will focus on the essential issues raised by the proposed reforms and the basic principles that a constitutional reform must respect when addressing the current challenges facing the Public Prosecutor's Office (and to a certain extent, the judiciary) in Peru.

1. Draft constitutional reform 6816/2023-CR – National School of the Judiciary (ENM)

80. The proposal for constitutional change (6816/2023-CR) seeks to replace the current model of judicial selection and training in Peru by establishing a National School of the Judiciary (Escuela Nacional de la Magistratura) as an autonomous constitutional body. This reform entails the merger of two existing institutions—the National Board of Justice (JNJ) and the Academy of the Magistrature (AMAG)—into a single entity responsible for the selection, training, evaluation, and appointment of judges and prosecutors at all levels.

81. According to proposal 6816/2023-CR, the 1993 Constitution marked a turning point by detaching judicial (and prosecutorial) appointments from political control, introducing the National Council of the Magistrature (from 2019, the JNJ) and creating the Academy of the Magistrature.⁷⁵ However, the Academy's role has remained marginal due to budgetary constraints, administrative conflicts, and the lack of coordination with judicial institutions. The current system allows open entry through various levels, without requiring uniform prior training, and places the responsibility for selection on a separate body (the JNJ), which often operates with different criteria than the Academy. The reform (6816/2023-CR) argues that this fragmented model has not ensured judicial independence or efficiency, and has even contributed to poor-quality appointments, procedural delays, and public disillusionment. The proposed School would assume full responsibility for the entire career lifecycle of judges and prosecutors from entry-level education to appointment, promotion, and ongoing professional development.

82. The core features of this reform (6816/2023-CR) are:

1. The reform proposes enshrining the National School of the Judiciary (Escuela Nacional de Magistratura – hereafter, ENM) in the Constitution, thereby replacing Articles 150 and 151, and repealing or modifying the related provisions concerning the JNJ and AMAG. The school would have autonomy and be governed by its Organic Law.
2. The School (ENM) would be the sole institution responsible for the selection and appointment of judges and prosecutors, including the heads of the Control Authorities of both the Judiciary and Public Prosecutor's Office, after public competitions and a mandatory period of academic and practical induction.
3. Entry into the judicial or prosecutorial career would be through a single, competitive admission process, followed by a rigorous two-year, full-time multidisciplinary training, and a six-month supervised probationary period. This process ensures a uniform level of specialisation, professional identity, and institutional commitment.
4. The proposal includes the elimination of periodic ratification - a controversial and politically sensitive mechanism for confirming judges' tenure - on the basis that

⁷⁵ Legal Formula 6816/2023- CR, p. 34.

permanent evaluation, merit-based promotion, and irremovability guarantees offer a more robust framework for judicial independence.

83. The reform not only transforms how future judges and prosecutors are trained and appointed but also restructures the governing body that oversees this process and puts an end to the long-contested practice of periodic ratification. At the heart of this new architecture lies a Board of Directors, envisioned as the highest governing authority of the ENM. It will be composed of three professionals: a Supreme Court judge, active or retired, a Supreme Prosecutor, active or retired, and a former director of a postgraduate law school from a public university with more than 50 years of seniority. These individuals, elected by their peers, will serve full-time for a non-renewable five-year term. From among themselves, they will appoint a president to serve as the executive head of the school for up to three years.

84. The eligibility requirements for board members are stringent: candidates must be Peruvian-born citizens, at least 55 years old, hold law degrees, and have at least 25 years of legal practice. They must also possess graduate academic qualifications and a clean public record. Because of the Board's exceptional authority, its members will enjoy the same legal protections, responsibilities, and incompatibilities as Supreme Court judges. They will be immune from ordinary prosecution, subject only to removal by a two-thirds majority in Congress in cases of serious misconduct. This measure is intended to shield them from political pressure while ensuring accountability at the highest level.

85. The proposed Article 151 reimagines the foundations of the judicial and prosecutorial careers in Peru by placing merit-based formation and promotion at the centre of institutional development.⁷⁶ It establishes a structured career path, beginning with a public competitive selection process administered by the ENM. Admission to the School will be based strictly on open competition, with an emphasis on academic and professional merit. Once admitted, candidates will undergo an intensive, multidisciplinary training program lasting two years, conducted on a full-time basis. After completing the academic phase, candidates will engage in a six-month supervised provisional placement, allowing them to put their knowledge into practice under close guidance. This transitional phase bridges theory and application, serving both as a testing ground and a mentoring opportunity. The career ladder begins at the base: Justice of the Peace for judges and Deputy Provincial Prosecutor for prosecutors. From there, promotion is meritocratic, governed by principles of specialisation, suitability, and performance.

86. In the current system, the Training Programme for Judicial Candidates (PROFA), is non-compulsory, following the Constitutional Court's jurisprudence in STC Nos. 0045-2004-AI/TC and 0025-2005-PI/TC. The Court determined that the compulsory nature of judicial training programs could infringe upon the right of access to public office. Consequently, the PROFA was relegated to a non-binding training mechanism, with only brief induction or qualification courses imposed post-selection.

87. The Venice Commission has already stressed that "the necessary professional knowledge and skills for the newly appointed prosecutors are equally important for the efficiency and independence of the Prosecution Service".⁷⁷ The proposal for two years of initial training of

⁷⁶ The UN Guidelines on the Role of Prosecutors recommend that "Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law." The CCPE adopted a similar position and stated that "[t]he highest level of professional skills and integrity is a prerequisite for an effective prosecution service and for public trust in that service. Prosecutors should, therefore, undergo appropriate education and training with a view to their specialisation".

⁷⁷ [CDL-AD\(2024\)013](#) Montenegro - Urgent Follow-Up Opinion to the Opinions on the Law on the State Prosecution Service, para 41.

prosecutors seems to be reasonable.⁷⁸ An adequately long and structured programme serves as a crucial safeguard for ensuring the professional competence, ethical grounding, and independence of judicial office holders from the outset of their careers.

88. The reform also tackles one of the most controversial aspects of the Peruvian judicial system: the ratification process required by the Article 154 para 2 of the Constitution, which currently requires magistrates to be reconfirmed every seven years. Security of tenure is considered a cornerstone of independence of prosecutors' office. The current JNJ is responsible for assessing performance evaluations: partial evaluations every 3.5 years; full ratification every seven years; disciplinary authority, including reprimands, suspension (up to 120 days), and dismissal, with procedural safeguards. Final decisions of the JNJ cannot be appealed, raising concerns about the absence of appeal mechanisms. The Venice Commission in its 2008 Opinion on Montenegro stressed that "Since it is obvious that prosecutors (as is also the case in Montenegro) may of course be removed under disciplinary proceedings, fixed term appointments in combination with a possibility of reappointment cast doubt on the independence of the prosecution service,"⁷⁹ and that prosecutors should be appointed until retirement.⁸⁰

89. While originally conceived as a quality control measure, ratification has over time evolved into a tool of political and institutional control, subject to opaque procedures, anonymous complaints, and even psychological evaluations with little due process. The reform removes the 7-year ratification mechanism, which prevents possibility of political or arbitrary control, and enhances security of tenure - a cornerstone of independence of public prosecutors. Instead, it introduces a system of permanent, merit-based performance evaluation that begins at the very start of a magistrate's career. Performance will be assessed according to objective criteria such as productivity, quality of decisions, academic contributions, and training outcomes. Results will feed into a national merit table, jointly maintained by the ENM and the institutions of justice and used as the basis for promotions and incentives.

90. One of the most compelling arguments in the proposal is that non-ratification has disproportionate consequences when compared to formal disciplinary dismissal. While magistrates dismissed on disciplinary grounds retain the right to reapply to the judicial career, non-ratified magistrates are barred permanently under the current constitutional text. The authors of the proposal consider that this is contrary to the principle of equality and non-discrimination under Article 2 para 2 of the Constitution and redefines non-ratification - originally conceived as an administrative mechanism - as a de facto sanction, albeit without the procedural safeguards attached to disciplinary proceedings.

91. Additionally, the proposal in Article 157 introduces a two-tier disciplinary procedure. The first-instance body is a tribunal composed of three members: two Supreme Court justices or Supreme Prosecutors (as appropriate), randomly selected from their peers to avoid bias, and the head of the respective National Control Authority, who presides over the proceedings. The final decision rests with the Plenary Chamber of the Supreme Court or the Board of Supreme Prosecutors, respectively. Disciplinary proceedings may result in sanctions ranging from fines and suspensions to outright dismissal. The principles of proportionality and non-arbitrariness are explicitly enshrined, and this new provision can be positively assessed.

⁷⁸ As far as the duration of the initial training is concerned, the Venice Commission recalls that in the case of Montenegro, the Venice Commission criticised the reduction of initial training for judges and prosecutors from 18 to 12 months. It noted that the reform was not in line with European standards or with recommendations previously addressed to Montenegro (Venice Commission, [CDL-AD\(2024\)013](#) Montenegro - Urgent Follow-Up Opinion to the Opinions on the Law on the State Prosecution Service, para 40).

⁷⁹ [CDL-AD\(2008\)005](#), Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, para 34.

⁸⁰ [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, para 50.

92. But despite these positive aspects, this proposal contains also provisions that can raise serious concerns, as it is the proposal for institutional merger of JNJ and AMAG and concentration of powers into a single, constitutionally entrenched ENM. Such merger raises risks of excessive centralisation, especially as the ENM will hold exclusive power over admittance, training, appointment and promotion of judges and public prosecutors. This may concentrate unchecked influence in a small, insular Board of Directors consisted of three persons drawn from judicial/prosecutorial elites and academia. This three-member board of directors may lack representativeness and pluralism, undermining its legitimacy. International standards call for pluralistic, diverse composition of oversight and appointment bodies of judges and prosecutors.

2. Draft constitutional reforms 7139/2023-CR and 8040/2023-CR

93. Draft Law No. 7139/2023-CR is qualified as an “emergency reform” proposing to overhaul the Public Prosecutor’s Office through a temporary declaration of institutional emergency and introducing a two-year reorganisation phase. The law would suspend the powers and functions of the Prosecutor General and the Board of Supreme Prosecutors. In their place, a National Assembly of Prosecutors (ANF) would be established. This body, comprising seven members—four elected by the Presidents of the Boards of Supreme Prosecutors among their Presidents and three from the Presidents of the by Provincial Boards among theirs—would temporarily assume leadership and governance of the institution. The President of the ANF, elected from within its own members, would act with the full powers of the Prosecutor General for a one-year term. The ANF would meet weekly and possess the authority to revise or replace current coordinating prosecutors, particularly in light of disciplinary evaluations. The bill also mandates the creation of a Special Commission to draft a new Organic Law for the Public Prosecutor’s Office. This commission would include representatives from the ANF, the Ministry of Justice, the Supreme Court, and the national bar associations.

94. The Venice Commission notes that under the Constitution of Peru the only possibility of declaring a state of emergency is provided by Article 137, according to which the President of the Republic, with the consent of the Cabinet, may decree for a determined time period in all or part of the national territory, and with a duty to report to Congress or Permanent Assembly, a state of emergency, in case of disturbances of the peace or the domestic order, disasters, or serious circumstances affecting the life of the Nation. Such state of emergency may only last sixty days, after which it requires extension by decree. The proposed reform aims at introducing a new concept of “institutional emergency”. However, suspending the National Prosecutor and the Board of Supreme Prosecutors for a two-year “emergency” without any disciplinary proceedings, judicial oversight, or individual accountability is contrary to the international principles of irrevocability and independence. Establishing an ad hoc, temporary governance structure outside the constitutional framework erodes the hierarchical and institutional coherence of the Public Prosecutor’s Office. The lack of transparency in selection, and broad powers of the ANF (including dismissal and reorganisation), create room for abuse. The Venice Commission is of the view that this proposal of “emergency reform” should be reconsidered.

95. The second proposal for constitutional reform (*8040/2023-CR*) also aims to declare a state of reorganisation for the JNJ and the Public Prosecutor’s Office and also outlines a temporary governance framework. At the heart of the proposed reform lies the extraordinary mechanism of transferring leadership of the JNJ to a transitional commission composed solely of former presidents of the Constitutional Court of Peru. These figures - esteemed for their judicial expertise and presumed political independence - would be entrusted with steering the institution through a period of reorganisation. They would oversee the appointment of new Supreme Prosecutors.

96. In parallel, the reform proposes the temporary substitution of current Supreme Prosecutors by the most senior career prosecutors in the prosecutorial hierarchy. According to the

explanatory memorandum on the proposal,⁸¹ this interim measure aims to ensure institutional continuity and avoid governance vacuums, while longer-term appointments are being made under the renewed framework.

97. The proponents of the reform justify these measures by appealing to the doctrine of constitutional necessity, arguing that the gravity of the crisis demands exceptional and temporally limited interventions. The proposed reform thus aspires to serve as a constitutional remedy of last resort, aimed at stabilising two foundational organs of the Peruvian State. By temporarily entrusting governance to individuals regarded as impartial and institutionally credible, the initiative seeks to reestablish public confidence, restore the integrity of the prosecutorial function, and ensure the effective administration of justice.

98. The Venice Commission is of the opinion that this proposal of temporarily transferring leadership of the JNJ to a non-elected transitional commission of ex-Constitutional Court presidents seriously affects the functioning of one of the state powers and therefore contradicts the principle of legality and institutional continuity.⁸² It undermines guarantees of independence and constitutes executive or legislative encroachment on judicial governance. Replacing sitting Supreme Prosecutors with subordinate career prosecutors undermines tenure guarantees and the principle of security of office. Invoking “constitutional necessity” to reorganise the oversight bodies without objective criteria, judicial review, or time-bound safeguards fails to meet the strict tests for emergency intervention.⁸³

99. In this regard, the Venice Commission can refer to its previous Opinions concerning the renewal of the composition of a judicial council following a legislative reform.⁸⁴ The functions of the judicial council and of the prosecutorial council in the system of checks and balances are very similar, despite evident difference in the status of judges and prosecutors in many legal orders, so the Commission’s findings are applicable to the case at hand as well. The Venice Commission considers that when using its legislative power to design the future organisation and functioning of the judiciary, Parliament should refrain from adopting measures which would jeopardise the continuity in membership of the High Judicial Council. Removing all members of the Council prematurely would set a precedent whereby any incoming government or any new Parliament, which did not approve of either the composition or the membership of the Council could terminate its existence early and replace it with a new Council. In many circumstances such a change, especially on short notice, would raise a suspicion that the intention behind it was to influence cases pending before the Council.”

100. The Venice Commission has repeatedly emphasised that political stability and predictability are not only core values in a democratic system but also essential for effective governance and long-term institutional planning. It has therefore cautioned that a constitution should not be amended “in conjunction with every change in the political situation in the country or after a formation of a new parliamentary majority.” This pattern of frequent or proposed constitutional revisions - particularly in areas affecting the independence and structure of the prosecution - raises questions of constitutional instability and weakens institutional continuity.

⁸¹ [CDL-REF\(2025\)043](#).

⁸² [CDL-AD\(2010\)001](#), Report on constitutional amendment, para 105.

⁸³ In respect of the “constitutional necessity”, the Venice Commission in its report on respect for democracy and the rule of law during states of emergency pointed out that « only measures which are necessary to help the State overcome the exceptional situation may be justified. The general purpose of emergency measures is overcoming the emergency and returning to ‘normalcy’. This entails that the state of emergency must be terminated immediately after the emergency has passed and the powers established by normal legislation suffice for coping with the situation» See [CDL-AD\(2020\)014](#), Report - Respect for democracy, human rights and the rule of law during states of emergency: reflections. Para 10 and 17.

⁸⁴ [CDL-AD\(2024\)013](#) Montenegro - Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service, para 46.

101. At the same time, the Venice Commission acknowledges that stability is not an end in itself. As noted in its general principles, “instability and inconsistency of legislation or executive action may affect a person’s ability to plan his or her actions. However, law must also be capable of adaptation to changing circumstances. Law can be changed, but with public debate and notice, and without adversely affecting legitimate expectations.”⁸⁵ In particular, the reintroduction of bicameralism after the April 2026 elections will entail a significant institutional change, which in the Commission’s view would call for a cautious approach to additional constitutional reforms in the meantime. The Peruvian authorities are encouraged to approach constitutional reform with restraint, and with broad political consensus, ensuring that the foundational rules governing justice institutions are not subject to short-term political interests but reflect a stable and coherent long-term vision for the rule of law.

VI. Conclusion

102. The Commission emphasises that stability, independence, and professionalism in the Public Prosecutor’s Office are essential pillars of a democratic State governed by the rule of law. The efforts to strengthen integrity and accountability within the justice system, including the prosecution service, and to respond to public frustration with the perceived immunity of some perpetrators of serious crime, particularly in cases involving serious crime, are legitimate objectives. While reform is both necessary and legitimate, it must not be driven by political expediency or used as a means of undermining the autonomy of the Prosecutor General’s Office. A pattern of frequent constitutional revisions - particularly in areas affecting the independence and structure of the prosecution - raises questions of constitutional instability and weakens institutional continuity. Frequent, piecemeal reforms carry the risk of producing cumulative adverse effects on the rule of law, thus undermining the independence and stability of the prosecutorial institutions and the judiciary as a whole, and defeating the stated aims of such reform efforts. The Peruvian authorities are therefore encouraged to approach constitutional reform with restraint, in a comprehensive manner and with broad political consensus, ensuring that the foundational rules governing justice institutions are not subject to short-term political interests but reflect a coherent long-term vision for the rule of law.

103. Disciplinary or removal proceedings in respect of the prosecutors must be grounded in clearly defined legal norms and subjected to independent judicial review. Any form of political retaliation - particularly through impeachment - directed against prosecutors or members of oversight bodies such as the JNJ poses a serious threat to the separation of powers and the independence of justice institutions.

104. In this context, several structural problems in the legal and institutional framework governing the Public Prosecutor’s Office remain to be addressed:

- The respect for constitutional stability and international standards concerning prosecutorial independence.
- The composition of the JNJ, which lacks internal balance and institutional diversity, with no representation of judges or prosecutors elected by their peers. This undermines the legitimacy of its decisions concerning appointments, evaluations, and dismissals.
- The ratification procedure every seven years for prosecutors creates an undue risk to security of tenure, especially when combined with broad discretionary power over removal and insufficient procedural safeguards.
- The disciplinary regime remains vague and open-ended, which increases the potential for misuse, particularly in cases where disciplinary procedures overlap with the exercise of discretionary prosecutorial powers.

⁸⁵ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, para 60.

- Recent legislative initiatives have sought to introduce criminal or disciplinary liability for prosecutors who decide not to request pre-trial detention, which could severely compromise prosecutorial discretion and professional judgment.

105. These issues seriously affect the operation of the Public Prosecutor's Office point to a need for a reform that preserves the independence of the prosecution while strengthening accountability through transparent, fair, and legally grounded procedures involving all parties concerned.

106. Accordingly, the Venice Commission invites the Peruvian authorities in the process of ongoing discussions of constitutional reform to consider the following recommendations:

1. Reconsider the current constitutional reform proposals ensuring that the constitutional principles and mechanisms of the state of exception as well as the principles of independence of the Public Prosecutor's Office be respected and the foundational rules governing justice institutions reflect a stable and coherent long-term vision for the rule of law.
2. Reconsider the impeachment mechanisms against prosecutors and members of the JNJ.
3. Reform the composition of the JNJ to include members of the judiciary and prosecution elected by their peers, to enhance internal legitimacy and expertise.
4. Consider the possibility of creating two separate bodies or at least separate internal chambers within the JNJ or any other body responsible for prosecutorial and judicial matters to reflect their differing institutional roles and ensure that disciplinary and appointment decisions are made by those with relevant experience.
5. Eliminate the seven-year ratification mechanism for prosecutors and replace it with a model based on continuous career evaluation and clear, objective criteria for performance and advancement.
6. Clearly define disciplinary offences in the Organic Law, distinguishing between unlawful conduct and legitimate discretionary decisions made in good faith.
7. Ensure that decisions regarding disciplinary sanctions and dismissals are subject to full judicial review before an independent court.
8. Promote institutional stability and legal certainty, ensuring that any constitutional or legislative reform of the prosecution service follows an inclusive, deliberative process based on broad consensus and respect for democratic principles.

107. The Venice Commission expresses its hope that these recommendations will be taken into account during the preparation of proposals of the constitutional reform multiparty Commission tasked with preparing a proposal of a complete reform (*reforma integral*) of the justice system in consultation with the institutions concerned and other national stakeholders.

108. The Venice Commission remains at the disposal of the Prosecutor General's Office, the Congress and other Peruvian authorities for further assistance in this matter.