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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

**PERU**

**OPINION**

**ON**

**A SET OF CONSTITUTIONAL AND LEGISLATIVE REFORMS  
CONCERNING THE JUDICIARY**

**Adopted by the Venice Commission  
at its 146<sup>th</sup> Plenary Session  
(Venice, 6-7 March 2026)**

**On the basis of comments by**

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**Mr Rafael BUSTOS GISBERT (Member, Spain)**  
**Ms Renata DESKOSKA (Member, North Macedonia)**  
**Mr Martin KUIJER (Member, Netherlands)**

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## I. Introduction

1. By letter of 5 September 2025, Ms Janet Tello Gilardi, President of the Judicial Branch and the Supreme Court of Peru, requested an Opinion of the Venice Commission of the Council of Europe on a set of reforms concerning the judiciary.
2. Ms Nina Betetto, Mr Rafael Bustos Gisbert, Ms Renata Deskoska, and Mr Martin Kuijer acted as rapporteurs for this Opinion.
3. On 10 and 11 February 2026, a delegation of the Commission composed of Ms Betetto, Mr Bustos Gisbert, and Mr Kuijer, accompanied by Ms Simona Granata-Menghini, Director, Secretary of the Commission, and Mr Adrià Rodríguez-Pérez from the Secretariat, travelled to Lima and had meetings with representatives of the Judicial Branch and the Supreme Court, the Congress, the Ministry of Foreign Affairs, the National Justice Board, the Constitutional Court, the Public Prosecutor's Office, as well as representatives of civil society, associations of judges, academia, and international organisations present in Lima.
4. This Opinion was prepared in reliance on the English translation of the adopted and proposed reforms ([CDL-REF\(2026\)004](#)). 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. The draft opinion was examined at the joint meeting of the Sub-Commissions on the Judiciary, the Rule of Law and Latin America on 5 March 2026. Following an exchange of views with Mr Manuel Estuardo Luján Túpez, Titular Supreme Judge and National Coordinator of the National Specialised Subsystem of the Judiciary on Asset Forfeiture, Supreme Court of Peru, it was adopted by the Venice Commission at its 146<sup>th</sup> Plenary Session (Venice, 6-7 March 2026).

## II. Background and scope of the Opinion

### A. Context and political developments

6. Judicial reform has been on Peru's agenda for at least two decades, with key attempts at major reform in 2001, 2008, 2012, and 2019, to name just a few examples. More recently, Peru's Congress has initiated numerous constitutional and legislative reforms impacting the judiciary and other independent institutions. Notably, Congress has also increasingly relied on impeachment procedures pursuant to Articles 99 and 100 of the Constitution, targeting among others senior judges and prosecutors.<sup>1</sup>
7. During the visit to Lima, the delegation of the Venice Commission also heard that the Judiciary and individual judges are the target of verbal attacks, sometimes by high-ranking officials. During the meetings in Lima, the delegation heard of political pressures on the Judiciary, including intimidation, threats, financial pressures, stigmatisation, and even cases of physical violence. Some judges are reportedly facing criminal liability proceedings due to the content of their judgments. Complaints related to conflicts of jurisdiction were also mentioned, including when judges exercise constitutional review pursuant to Article 138 of the

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<sup>1</sup> For an overview of these developments, see in particular, 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, and Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office.

Constitution. These claims are consistent with the previous findings of the Venice Commission on the pressure exerted on both the Peruvian judiciary and its prosecution.<sup>2</sup>

## **B. Legal framework**

### **1. Domestic legal framework**

8. According to the Constitution, judicial power emanates from the people and is exercised exclusively by the judiciary through a hierarchical system of courts, in accordance with the Constitution and the law (Article 138). The Constitution affirms the unity and exclusivity of the Judiciary, which is composed of jurisdictional bodies (courts and tribunals administering justice) and governing and administrative bodies (Article 143 of the Constitution). The Supreme Court of Justice is the highest judicial body, and its Chief Justice serves as head of the judiciary; the plenary session of the Supreme Court is the highest deliberative organ (Articles 143 and 144 of the Constitution). No independent or *ad hoc* jurisdictions may be established, except for military and arbitral jurisdiction (Article 139.1 of the Constitution).

9. The independence of judges is guaranteed, subject only to the Constitution and the law. The Constitution also guarantees the irrevocability of, and their continuance in, office, as long as they show proper conduct and qualification for their function (Article 146). No authority may interfere in pending cases, take over judicial matters, invalidate final judgments, halt proceedings, or modify or delay the execution of judgments (Article 139.2 of the Constitution). Exceptions exist for executive clemency and congressional investigations, which must not interfere with judicial proceedings or have jurisdictional effects.

10. Since its adoption, the Constitution has been amended multiple times, including the reform in 2019, which restructured the judicial oversight body 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 Board of Justice (*Junta Nacional de Justicia*, JNJ), which not only assumed the functions previously assigned to the CNM, but whose responsibilities were also significantly expanded and formalised.<sup>3</sup>

11. In 2024, Congress also adopted a broad constitutional reform. The new constitutional provisions give members of Congress extensive oversight powers, including the possibility of establishing investigative committees (Article 97 of the Constitution) and the competence to initiate impeachment proceedings against top judges before a newly established Senate (Articles 99-100 of the Constitution).<sup>4</sup>

### **2. Overview of the reforms**

12. In her request, the President refers to several adopted legislative amendments as well as to some proposed constitutional and legal reforms (hereinafter, the reforms).

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<sup>2</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 45

<sup>3</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, paras 20-21.

<sup>4</sup> With the reintroduction of bicameralism following the elections scheduled for 12 April 2026, the Peruvian Congress will consist of two chambers: a Chamber of Deputies composed of 130 members elected in 27 electoral districts corresponding to Peru's regions, with seats allocated to each district according to population; and a Senate composed of 60 members, 30 of whom will be elected nationwide by the entire electorate, and 30 of whom will be elected from 27 electoral districts, each district electing one senator (except for Lima, which will elect four senators in light of its larger population).

13. Overall, the adopted laws and the proposed reforms are heterogeneous and address a broad range of issues which affect the judiciary, some of them directly, for example in terms of appointment of judges, the disciplinary system, provisions on criminal liability, dismissal or impeachment, and the role of ordinary courts in constitutional and conventional review. Other reforms seem, in principle, to touch upon the judiciary only indirectly. Furthermore, some of these reforms have already been adopted, whereas others are still being discussed in parliament.

14. In addition, the Congress of Peru has set up a Special High-Level Multi-Party Commission, tasked with studying and presenting a proposal for a comprehensive reform of the Justice Administration System in Peru (hereinafter, the Special High-Level Multi-Party Commission).<sup>5</sup> In November 2025, this commission approved the Final Report of its Phase 1, which includes an analysis and a draft proposal for constitutional reform (hereinafter, the Special Commission's Phase 1 Final Report). However, the draft constitutional amendments may not be adopted by this parliament since, pursuant to Article 206 of the Constitution, any constitutional reform "must be approved by Congress with an absolute majority of the legal number of its members and ratified by referendum." The referendum may be omitted when the agreement of Congress is obtained in two successive ordinary legislatures with a favourable vote, in each case, of more than two-thirds of the legal number of its members. Since the upcoming general elections have been scheduled for April 12, any of these two scenarios seems unlikely in such a short term. Nevertheless, it is also possible that the next parliament may take up this proposal, or elements of it, as a basis for future constitutional reform.

### C. Applicable international standards

15. The independence and impartiality of judicial administration constitute a well-established principle under universal and regional human rights regimes. At the global level, Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law.<sup>6</sup> In its authoritative interpretation of this provision, the United Nations (UN) Human Rights Committee affirms that the requirement of independence is an absolute right not subject to derogation, and requires, *inter alia*, separation of the judiciary from the executive and legislative branches, objective and transparent procedures for appointment, guarantees relating to tenure and security of office, and protection from external pressures and improper influence.<sup>7</sup> These binding treaty standards are reinforced by soft-law instruments, notably the Basic Principles on the Independence of the Judiciary (endorsed by UN General Assembly resolutions 40/32 and 40/146), which elaborate safeguards concerning judicial selection, tenure, discipline, and conditions of service.<sup>8</sup> The Bangalore Principles of Judicial Conduct, endorsed by the UN Economic and Social Council of the (ECOSOC) resolution 2006/23, articulate the core values of independence, impartiality, integrity, propriety, equality, competence, and diligence as essential components of judicial office.<sup>9</sup>

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<sup>5</sup> For an overview of the work by the Special High-Level Multi-Party Commission, see For an overview, see in particular Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office.

<sup>6</sup> United Nations (UN), International Covenant on Civil and Political Rights (ICCPR), Art. 14(1). Peru ratified the ICCPR on 28 April 1978. See also UN General Assembly, Universal Declaration of Human Rights, Res. 217 A (III), Art. 10.

<sup>7</sup> UN Human Rights Committee, General Comment No. 32: Article 14 – Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, paras 18–20. See also UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12; A/HRC/RES/23/6; and Integrity of the judicial system, A/HRC/RES/25/4.

<sup>8</sup> UN General Assembly, Basic Principles on the Independence of the Judiciary, Res. 40/32 and 40/146. See also UN General Assembly, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Res. 67/1, paras 13–16.

<sup>9</sup> UN Economic and Social Council (ECOSOC), Bangalore Principles of Judicial Conduct, Res. 2006/23.

16. The importance of judicial independence is further underscored in several UN treaties addressing specific groups. For example, Article 37(d) of the Convention on the Rights of the Child, Article 18(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 11(3) of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 13(1) of the Convention on the Rights of Persons with Disabilities require that proceedings be conducted before competent, independent and impartial authorities or tribunals, thereby recognizing independence and impartiality as fundamental safeguards for access to justice and fair treatment for these populations.<sup>10</sup>

17. Judicial independence is also recognised as a structural component of the Rule of Law beyond the fair trial context. Article 11 of the UN Convention against Corruption (UNCAC) requires States Parties to take measures to strengthen integrity and prevent opportunities for corruption within the judiciary.<sup>11</sup> In this regard, the UN Special Rapporteur on the independence of judges and lawyers has affirmed that independence and integrity constitute essential components for ensuring effective international cooperation in the investigation and punishment of corruption.<sup>12</sup>

18. At the regional level, the independence and impartiality of the judiciary is firmly enshrined within the Inter-American human rights system as well. Article 8(1) of the American Convention on Human Rights guarantees the right to a hearing, with due guarantees, by a competent, independent, and impartial tribunal previously established by law.<sup>13</sup> Closely linked to this protection, Article 25 of the Convention guarantees the right to simple and effective judicial protection, which presupposes the existence of independent and impartial judicial authorities.<sup>14</sup> The Inter-American Commission on Human Rights has further clarified the scope of these guarantees in its report on Guarantees for the Independence of Justice Operators, emphasising that judicial independence requires institutional autonomy, objective appointment procedures, security of tenure, and protection against external pressures.<sup>15</sup> These standards are complemented by the Statute of the Ibero-American Judge, which also articulates principles governing judicial independence, impartiality, and professional ethics.<sup>16</sup>

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<sup>10</sup> See, respectively, UN, Convention on the Rights of the Child, Art. 37(d). Peru ratified the Convention on 4 August 1990. UN, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 18(1). Peru ratified the Convention on 14 September 2005. UN, International Convention for the Protection of All Persons from Enforced Disappearance, Art. 11(3). Peru ratified the Convention on 26 July 2012. UN, Convention on the Rights of Persons with Disabilities, Art. 13(1). Peru ratified the Convention on 20 January 2008.

<sup>11</sup> UN, Convention against Corruption (UNCAC), Art. 11.

<sup>12</sup> UN Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/44/47, para. 36.

<sup>13</sup> Organization of American States (OAS), American Convention on Human Rights, Art. 8(1). Peru ratified the American Convention on 28 July 1978 and accepted the contentious jurisdiction of the Inter-American Court of Human Rights on 21 January 1981. This guarantee is also reflected in Article XXVI of the American Declaration of the Rights and Duties of Man. OAS, American Declaration of the Rights and Duties of Man, Art. XXVI.

<sup>14</sup> The Inter-American Court of Human Rights (IACtHR) consistently treats Articles 8 and 25 together when judges are removed, disciplinary proceedings are flawed, constitutional review mechanisms are bypassed, or political branches interfere with the judiciary. In cases like *Tribunal Constitucional v. Peru* and *López Lone v. Honduras*, the Court found violations of both Article 8 and Article 25 because the absence of an independent tribunal undermines both adjudication and judicial protection. IACtHR, *Caso del Tribunal Constitucional vs. Perú (Constitutional Court v. Peru)*, Series C No. 71, paras 66–75 and 89–96; IACtHR, *López Lone et al. v. Honduras*, Series C No. 302, paras 185–193 and 232–239. See also IACtHR, *Apitz Barbera et al. v. Venezuela*, Series C No. 182, paras. 107–112.

<sup>15</sup> 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, OEA/Ser.L/V/II, Doc. 44 (5 December 2013).

<sup>16</sup> VI Ibero-American Summit of Presidents of Supreme Courts and Tribunals of Justice, Statute of the Ibero-American Judge (2001), Arts. 1–7.

19. In its updated Rule of Law Checklist, the Venice Commission has underlined that “[j]udges cannot uphold the Rule of Law if domestic law deprives them of adequate guarantees on matters directly touching upon their independence and impartiality. Some of the most common measures which may undermine judicial independence include changing judicial appointment procedures, replacing judges or failing to appoint or vote on nominees.”<sup>17</sup> European and international standards also recognise the need for safeguards protecting judges from pressures linked to their adjudicative role, and the Venice Commission has consistently underlined that judges “should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes).”<sup>18</sup>

20. The standards of the Venice Commission are closely aligned with the case-law of the European Court of Human Rights (hereinafter, the European Court), particularly as concerns Article 6 of the Convention for the Protection of Fundamental Rights and Freedoms (hereinafter, the European Convention on Human Rights, the European Convention, or the ECHR).<sup>19</sup> The standards of the Venice Commission also draw from those set by other Council of Europe’s bodies, and in particular its Committee of Ministers’ Recommendation (2010)12 on the independence, efficiency and responsibilities of judges, as well as the Opinions of the Consultative Council of European Judges (CCJE).

#### **D. Scope and approach of the Opinion**

21. In examining the reforms, implemented and proposed, and based on the meetings held with several interlocutors in Lima, the Venice Commission understands that the impact of these measures must be approached in a systematic way. For this reason, and in view of the breadth of the reforms, this Opinion will not examine each adopted law and proposed constitutional and legal reforms individually, but rather address key issues that are relevant for the independence and impartiality of the judiciary.

22. At the same time, some of the reforms affecting the judiciary also need to be assessed against the overall process of weakening of the checks and balances that the Venice Commission has already observed in its most recent Opinions on Peru. In particular, these concern the impeachment of members of election management bodies and, more broadly, the judiciary, as well as the proposed reforms concerning the Public Prosecutor’s Office. The need for holistic reforms substantially altering the judicial system that the Venice Commission always stresses in its Opinions calls in turn for a holistic examination of such reforms. Taken together, the breadth and frequency of the initiatives raise issues of constitutional stability and call for an assessment of their combined impact on the institutional balance governing the administration of justice.

23. Overall, these reforms will be assessed against international standards. It is not within the remit of the Venice Commission to assess the compatibility of any of the proposed or adopted reforms with the Constitution of Peru. The absence of comments on certain legal provisions of draft proposals for reform should not be seen as their tacit approval.

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<sup>17</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 102.

<sup>18</sup> Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System. Part I: The Independence of Judges, para. 61

<sup>19</sup> In its case-law, the IACtHR has also relied on the interpretation by the European Court concerning Article 6 ECHR when interpreting Article 8 of the American Convention. See, in particular, IACtHR, *Caso del Tribunal Constitucional vs. Perú (Constitutional Court v. Peru)*, Series C No. 71, paras. 64(f) and (j), as well as para. 75, which found violations of the American Convention’s guarantees of judicial independence and judicial protection in the context of impeachment and removal proceedings against judges of Peru’s Constitutional Court. See also IACtHR, *Apitz Barbera et al. v. Venezuela*, Series C No. 182, para. 55.

### III. Analysis

#### A. General remarks

24. From the outset, the Venice Commission stresses the importance of constitutional stability for judicial reform. Whereas the constitutional legislator has large discretion when choosing the level of detail with which issues are dealt with in the Constitution, the Venice Commission has consistently expressed the need for a holistic approach to reforms substantially altering the judicial system, especially when they change the personal composition of the courts.<sup>20</sup> This is also one of the relevant findings of the Venice Commission in its examination of some of the most recent reforms in Peru.<sup>21</sup> As the Constitution is the bedrock of a country's judiciary, its reform must be approached with utmost care.

25. As pointed out in previous Opinions, the system of checks and balances enshrined in the 1993 Constitution had ensured the stability of the State institutions for more than 20 years.<sup>22</sup> However, since the 2016 general elections, Peru has been marked by an increasing stand-off between the executive and the legislative branches, which have resulted in an erosion of the system of checks and balances. As noted by one of the interlocutors met in Lima, the Constitution of 1993 was largely inspired by that of 1979, and both were drafted in a different political and institutional context. While acknowledging that constitutional frameworks must evolve to address institutional tensions, the Commission underlines that reform must strengthen – not weaken – the separation of powers.

26. In its Updated Rule of Law Checklist, the Venice Commission underscores that “[t]he separation of powers, especially as reflected in judicial independence, is a basic principle of constitutional democracy. In turn, checks and balances are a necessary guarantee for the functioning of democratic institutions, for the protection of minorities and for the Rule of Law.”<sup>23</sup> Similar arguments can be found in the case-law of the Inter-American Court of Human Rights (IACtHR).<sup>24</sup>

27. The Venice Commission is aware that Peru's judiciary is not flawless. For example, the 2024 OECD's Justice Review of Peru criticises the fragmented institutionalisation of the justice system, hindering an already complex management system with blurred lines of responsibility.<sup>25</sup> This fragmentation generates overlap and duplication, conflicts of authority and competence in the governance of the judicial system, and limits accountability. The OECD also signals *inter alia*, the high number of judges on temporary employment, the slow clearance rates and case backlogs, and the lack of clarity in respect of the roles and powers of each branch of government in overseeing and checking the others. During the meetings in Lima, several interlocutors shared these and other concerns about the functioning of Peru's judiciary.

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<sup>20</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 154. See also Venice Commission and DGI, [CDL-AD\(2025\)044](#), Ukraine – Joint Opinion on draft amendments on disciplinary procedures against judges, declarations of integrity, and other procedures.

<sup>21</sup> See in particular, 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. To a certain extent, see also Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 104.

<sup>22</sup> 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; and Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office.

<sup>23</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 79.

<sup>24</sup> See, in particular, IACtHR, *Caso del Tribunal Constitucional vs. Perú (Constitutional Court v. Perú)*, Series C No. 71, para. 73.

<sup>25</sup> OECD, 2024 Justice Review of Peru, page 14.

28. The Commission recalls nonetheless that any judicial reform, even when necessary to address significant flaws in the system, must respect core Rule of Law principles.<sup>26</sup> In particular, any measures should address the underlying weaknesses while fully respecting the principles of legal certainty, including legitimate expectations, and the principle of non-retroactivity. Reforms must be conceived within a holistic and coherent framework, based on prior impact assessment and meaningful consultation, and must avoid any disproportionate interference by the legislative or executive authorities with the independence of the judiciary. The Commission further stresses the importance of respecting the sequence of changes in the judicial reforms and to give priority to the effective enforcement of the existing frameworks.<sup>27</sup>

29. The Commission notes that, in Peru, judicial reform has been addressed on two levels. On the one hand, in the past years, multiple laws have been adopted or proposed in a rapid succession, within a short timeframe, in an uncoordinated manner. In the context of this Opinion alone, the Venice Commission is asked to examine no less than thirteen such laws and bills on constitutional and legal reform which concern the judiciary, all of them tabled in the last few years.

30. On the other hand, a process of comprehensive constitutional reform is in progress; the Phase 1 Final Report by the Special High-Level Multi-Party Commission's work provides a comprehensive proposal for constitutional reform of the administration of justice. The Report, however, is not meant to be tabled as a bill in the Congress, but leaves it open for members of Congress to table reforms based either on its entirety or parts of it.

31. The Venice Commission is of the view that this approach to double-level judicial reform in Peru is problematic from the perspective of the Rule of Law. The lack a proper – global and coordinated – analysis of the problems and shortcomings of the judiciary opens up to question the necessity of the adopted reforms and curtails their potential impact. So does the lack of inclusive and meaningful consultations. The piecemeal approach to reforms in the recent years has not permitted to analyse the combined effect of each reform, and to take possible mitigating measures in consultation with all the stakeholders. The Commission recalls in this respect that the success of a judicial reform largely depends on its acceptance by all the stakeholders. Ownership is an essential feature of any successful reform.

32. The parallel preparation of a holistic judicial reform, despite its welcome comprehensiveness, does not seem to be designed to replace the adopted reforms, nor to suspend pending ones, but to explore additional venues. Issues of relevance for the judiciary are therefore discussed at the same time but in an unrelated manner in connection with specific pending bills and in connection with a future constitutional reform. The Special High-Level Multi-Party Commission has carried out extensive consultations, which is commendable; however, this comprehensive approach will not result in tabling a comprehensive proposal, and instead might even lead to individual, potentially uncoordinated and fragmented, initiatives which would extend the piecemeal approach of the past years.

33. Overall, the Venice Commission has already argued that, in the case of Peru, stability and predictability are not only core values in a democratic system but also essential for effective governance and long-term institutional planning.<sup>28</sup> Constitutional stability is not an end in itself and laws can be changed, but with public debate and notice, and without adversely affecting

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<sup>26</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 153

<sup>27</sup> Venice Commission and DGI, [CDL-AD\(2025\)044](#), Ukraine – Joint Opinion on draft amendments on disciplinary procedures against judges, declarations of integrity, and other procedures, para. 95

<sup>28</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 100.

legitimate expectations.<sup>29</sup> The Venice Commission thus recalls that any constitutional reform of the judiciary should follow an inclusive, deliberative process, based on broad consensus and respect for democratic principles.<sup>30</sup> To the extent possible, such reforms should be submitted for the consideration of the parliament in full, avoiding the current piecemeal or patchwork implementation. Any such reform should also be undertaken, building on the work of the current High-level Multi-Party Commission, after the upcoming general elections, in order to allow for sufficient time and meaningful discussions with all the relevant stakeholders.

## **B. Reforms directly affecting the judiciary**

### **1. Appointment and career of judges**

34. The method for appointing judges is the first criterion to be assessed as concerns the independence of the judiciary. In its updated Rule of Law Checklist, the Venice Commission has underlined that “there are clear links between the guarantee of judicial independence [and] the integrity of the judicial appointment process.”<sup>31</sup>

35. Two bills currently pending in Congress are related to judicial appointments: Bill No. 9675/2024-CR, which concerns mainly the method of appointment of Supreme Court judges; and Bill No. 10585/2024-CR, which in its initial version regulated issues spanning from the appointment of the President of the Supreme Court, to its dismissal, and includes provisions on provisional and supernumerary judges (it has in the meantime been amended).

36. Chapter IX of the Constitution establishes the CNM, later reconfigured as the JNJ, as the constitutional body responsible for the selection, appointment, ratification, and discipline of judges (and prosecutors), except in cases where judges are chosen by popular election (Art. 150). The Constitution expressly provides that this body is independent and governed by its Organic Law (Art. 150). Judges (and prosecutors) are appointed by the JNJ at all levels through public, merit-based competitions, following personal assessment and requiring a public and reasoned vote of two-thirds majority (5 out of 7) (Art. 154.1 of the Constitution).

#### **a. Appointment of Supreme Court judges and dismissal of presidents**

37. Bill No. 9675/2024-CR proposes *inter alia* amending Articles 102-A and 150 of the Constitution of Peru and Article 2 of Law No. 30916 on the JNJ to exclude Supreme Court judges (and the Supreme Prosecutors) from the scope of appointments entrusted to the JNJ. With the amendment of Article 102-A of the Constitution, Supreme Court judges would instead be elected by the Senate.

38. As regards the modalities of guaranteeing judicial independence, including in the context of appointments, the Venice Commission is not in favour of one single model.<sup>32</sup> Methods of judicial appointments vary greatly according to different countries and their legal systems.<sup>33</sup>

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<sup>29</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 101.

<sup>30</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 106, recommendation 8.

<sup>31</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 102. See also paras 105 and 106. In a similar vein, 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.” See United Nations, A/HRC/44/47, para. 36.

<sup>32</sup> Venice Commission, [CDL-AD\(2007\)028](#), Judicial Appointments - Report, para 3.

<sup>33</sup> See, in particular, Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, [CDL-AD\(2023\)015](#), France - Joint Opinion on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, para. 32; and

The importance of a country's legal culture and traditions has been pointed out and the Commission has given due consideration to the existence in a national judicial system of formal safeguards set out in the constitution and laws, and informal safeguards entrenched in the political culture and practice.<sup>34</sup> Nevertheless, the Venice Commission argues that “[a]ppointments of judges of ordinary (non-constitutional) courts are not an appropriate subject for a vote by Parliament because the danger that political considerations prevail over the objective merits of a candidate cannot be excluded.”<sup>35</sup> Consequently, “[t]he involvement of parliament in the process may result in the politicisation of judicial appointments.”<sup>36</sup>

39. Notwithstanding the foregoing, the appointment of Supreme Court judges by parliament deserves further examination. In comparative perspective the appointment of Supreme Court judges by the legislature is not, in itself, unprecedented. The Venice Commission has, in certain contexts, accepted this practice in light of a country's legal culture and traditions, and has observed that parliamentary involvement may provide democratic legitimacy to the highest court, provided that adequate safeguards are in place.<sup>37</sup>

40. In this respect, at least two safeguards must be taken into account for such method not to risk the politicisation of appointments to the Supreme Court. First, the appointments must be embedded in a framework offering robust procedural safeguards, transparency, and merit-based selection, lest the decisive role attributed to a political body should undermine the perception, and potentially the reality, of independence at the highest level of the judiciary. Second, the Venice Commission has argued that such appointments should be made by qualified majority to ensure the broadest possible political support.<sup>38</sup>

41. As it currently stands, Bill No. 9675/2024-CR does prescribe that the appointment of Supreme Court judges by the Senate is to be made by a two-third majority of its members. However, there are no clear constitutional or legislative rules governing the Senate's appointment procedures, providing in particular for guarantees of merit-based assessments based on objective criteria (with the involvement of an independent body) as well as for transparency. The new procedure therefore raises serious concerns of a risk of increased politicisation.

42. Furthermore, the Commission is concerned that this proposal represents a step back in terms of ensuring the independence of Supreme Court judges if compared to the current system, by removing the power of appointment from the JNJ. It is true, as the Venice Commission has heard from different interlocutors met in Lima, that the current system is not flawless and that, in particular, the composition of the JNJ does not ensure sufficient representation of judges and sufficient independence. Regardless of these concerns, the

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Venice Commission and DGI, [CDL-AD\(2023\)029](#), The Netherlands - Joint Opinion on the legal safeguards of the independence of the judiciary from the executive power, paras. 8-9

<sup>34</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, [CDL-AD\(2023\)029](#), The Netherlands - Joint Opinion on the legal safeguards of the independence of the judiciary from the executive power, paras 8-9.

<sup>35</sup> Venice Commission, [CDL-AD\(2007\)028](#), Judicial Appointments - Report, para 47. See also para. 12.

<sup>36</sup> Venice Commission, [CDL-AD\(2007\)028](#), Judicial Appointments - Report, para. 10. See also Venice Commission, [CDL-AD\(2018\)003](#), Republic of Moldova – Opinion on the law on amending and supplementing the Constitution (Judiciary), paras 25-27.

<sup>37</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, [CDL-AD\(2023\)029](#), The Netherlands - Joint Opinion on the legal safeguards of the independence of the judiciary from the executive power, para. 24. See also Venice Commission, [CDL-AD\(2002\)026](#), Latvia – Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, paras 13 and 21-23; Venice Commission, [CDL-AD\(2015\)008](#), Preliminary Opinion on the Draft Law on amending the Law on the Judicial System and the Status of Judges of Ukraine, paras 50 and 51.

<sup>38</sup> Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, [CDL-AD\(2023\)029](#), The Netherlands - Joint Opinion on the legal safeguards of the independence of the judiciary from the executive power, para. 24. See also Venice Commission, [CDL-AD\(2020\)039](#), Ukraine – Urgent Opinion on the Reform of the Constitutional Court, para. 72.

reallocation of competences away from a constitutionally independent body to a political body with no strong guarantees against politicisation appears to reduce the institutional resilience of the judiciary and, in a context of at least perceived political capture of independent institutions, limit even further the JNJ's capacity to act as an effective guarantor of merit-based judicial appointments. Thus, the Venice Commission cannot see this proposal as a positive development for the independence of judges.

43. The Venice Commission therefore recommends that the power to appoint the judges of the Supreme Court remains with the JNJ, and that, at the same time, the manner of appointment and the guarantees of independence of the members of the JNJ be strengthened. Should the Peruvian Congress wish to move forward with these amendments, the Venice Commission recommends that Supreme Court judges be appointed not only by qualified majority of the Senate, but through a procedure which sufficiently ensures merit-based assessments, is grounded in objective criteria, and is transparent. Whereas these features may be set in statutory regulations, the Venice Commission is of the view that, in order to ensure legal certainty and clarity, as well as democratic legitimacy, the basic features of this procedure should be discussed and, to a certain extent agreed upon, in the context of the constitutional reform.

44. Furthermore, the procedure of appointment by the Senate should also provide for an adequate anti-deadlock mechanism, given that the requirement for qualified majority might lead to stalemates. There is no single model of anti-deadlock mechanism, each State should design its own. Options include drawing lots between pre-selected candidates who meet all the criteria, or the decision could be entrusted to neutral bodies.<sup>39</sup> At any rate, the anti-deadlock mechanism should not create a disincentive to reaching broad agreements on the basis of qualified majorities.

45. Bill No. 10585/2024-CR, on the other hand, initially proposed changing the manner of election of the President of the Supreme Court, introduced the dismissal of Supreme Court judges who had been elected President at the end of their term, and the immediate termination of all Supreme Court Judges who have held the office of President of the Supreme Court upon the enactment of the Law. On November 2025, the Justice and Human Rights Commission of Congress approved a substitute text that no longer includes provisions relating to the election and dismissal of the president of the Supreme Court. The Venice Commission welcomes that the replacement text of this Bill no longer includes these provisions, particularly those relating to the automatic dismissal of Presidents of the Supreme Court. The principle of security of tenure for officeholders in general, and for members of the judiciary in particular, is crucial, stemming from the principles of the Rule of Law and judicial independence.<sup>40</sup> The automatic dismissal of any Supreme Court judges who have held the office of President, or any judge appointed to the post upon ending its mandate, would seriously impinge upon this safeguard.<sup>41</sup>

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<sup>39</sup> For a more detailed overview of mechanisms, see Venice Commission, [CDL-PI\(2025\)023](#), Updated compilation of Venice Commission opinions and reports relating to qualified majorities and anti-deadlock mechanisms in relation to the election by parliament of constitutional and supreme court judges/presidents, prosecutors general, members of judicial and prosecutorial councils, independent/non-political bodies and ombudspersons.

<sup>40</sup> See, for example, Venice Commission, [CDL-AD\(2025\)015](#), Kosovo – Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, para. 46; Venice Commission, [CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 57. In the Inter-American system, security of tenure is enshrined in Article 8(1) of the American Convention on Human Rights. See, in particular, IACtHR, *Caso del Tribunal Constitucional vs. Perú (Constitutional Court v. Peru)*, Series C No. 71, para. 64(c).

<sup>41</sup> Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, [CDL-AD\(2014\)031](#), Georgia – Joint Opinion on the draft Law on Amendments to the Organic Law on General Courts, para. 97 *et seq.*

b. Temporary judges

46. Bill No. 10585/2024-CR further contains provisions on provisional and supernumerary judges, which deserve attention. Reports on Peru's judiciary and the majority of stakeholders met in Lima share the view that the excessively high number of temporary judges in Peru's judiciary must be urgently addressed.

47. Pursuant to Article 65 of Law No. 29277 on Judicial Career, judges are classified as tenured, provisional, supernumerary, and reserve candidates. Tenured judges are permanently appointed to exercise judicial functions at their respective level. Provisional judges are tenured judges who temporarily serve at the immediately higher level in cases of vacancy or absence. Supernumerary judges are qualified candidates registered to fill judicial vacancies in accordance with the Organic Law of the Judiciary. Reserve candidates are applicants who, although not appointed, remain eligible for appointment for up to one year, subject to compliance with legal requirements and the order of merit.

48. According to the OECD's review, the prevalence of temporary appointments is one of the most serious problems of the judicial system in Peru, as it has become systemic and affects judges' impartiality in many ways. According to their Review, the existing position-based system for recruitment and limited human resource planning have resulted in the widespread use of temporary judges.<sup>42</sup> As of 4 February 2026, there are 3 754 judges in Peru nationwide.<sup>43</sup> Of these, only 1 495 (39.82%) are tenured judges, while 2 259 (60.18%) hold temporary appointments. Specifically, 1 582 judges (42.14%) are supernumerary and 677 (18.03%) are provisional. This means that more than six out of ten judges in Peru do not hold permanent tenure.

49. Temporary judges are appointed by the presidents of the various courts, without a competitive and meritocratic procedure, are dismissed when the appointing President leaves office, and (possibly) reappointed by the next President. They also receive significantly lower compensation. While in Lima, the delegation of the Commission also learned that temporariness arose during the Fujimori era in an attempt to exercise control over judges. The Venice Commission underlines that substantial and prolonged provisional appointments represent a weakness in an independent judiciary, as temporary judges do not benefit from security of tenure, and their uncertain status coupled with financial inferiority presents risks of permeability to influence and corruption. This is a major problem because the intrinsic weakness of this type of judge is exacerbated by their short tenure, the absence of rules governing their appointment and renewal, and their relative weight in some essential bodies (most notably the Supreme Court). It should be stressed in this context that temporary judges sit as ordinary ones and participate in the allocation of cases on equal footing as the permanent judges.

50. Bill No. 10585/2024-CR does not address the underlying causes of temporariness but rather entrusts the appointment of such judges to a different body (whose guarantees of independence, as described above, do not provide adequate safeguards). These measures are unlikely to solve the existing shortcomings. Furthermore, the Bill sets a maximum term limit of one year (that can be extended for six additional months) which does not seem to account for Peru's current context.

51. In conclusion, it is the view of the Commission that Peru needs to urgently adopt an active policy of reforming its judicial structure and minimising temporary judges. This is all the more important the higher the court concerned. The Venice Commission therefore encourages the

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<sup>42</sup> OECD, 2024 Justice Review of Peru, page 104.

<sup>43</sup> According to the Judicial Branch's Statistical Portal, <https://portalestadistico.pj.gob.pe/dashboards/poder-judicial-en-cifras/>

Peruvian authorities to prioritise the issue of temporariness in the judiciary, as this is one of the main risks to its independence. While being aware of the relevant budgetary burden, it strongly recommends that ordinary judges be appointed permanently, until retirement. Whereas the resort to temporary judges cannot be excluded, the reform could link the term of temporary judges to the specific needs that call for their resort, which should be specific to each case, but based on clear and pre-established criteria.

### c. Ratification of judges

52. Lastly, and in addition to these two Bills, the Venice Commission has previously observed that judges are subject to a periodic ratification every seven years (Article 154.2 of the Constitution). In its Opinions, the Commission has consistently discouraged limited or renewable terms in office, as these may make the judge dependent upon the authority which appointed them or has the power to reappoint them. In the case of Peru, the Venice Commission found that “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.”<sup>44</sup> In this regard, the Commission welcomes that the Special Commission’s Phase 1 Final Report provides that judges shall no longer be subject to any form of ratification, replacing it with a permanent system of performance evaluation, on the understanding that periodic ratification is incompatible with the dignity of judicial office and with the presumption that those appointed through a competitive process exercise their functions legitimately. However, this Final Report and its proposals for constitutional amendment, as underlined above, will not be tabled in the current legislature and might not be taken up by the next.

53. Furthermore, the fact that the JNJ’s decisions concerning the evaluation and confirmation of judges is explicitly excluded from judicial review (Art. 142 of the Constitution) raises further concerns. This is particularly so as judges (and prosecutors) who are not ratified or who are dismissed are barred from re-entering the judiciary (or the Public Prosecutor’s Office) (Art. 154.2 of the Constitution). Therefore, the Venice Commission reiterates its recommendation that the ratification of judges (and prosecutors) be eliminated and replaced with a model based on continuous career evaluation and clear, objective criteria for performance and advancement.<sup>45</sup> Furthermore, any decision by the JNJ concerning the appointment or career of judges should be subject to judicial review.

## 2. Disciplinary proceedings and criminal liability of judges

54. Another cornerstone of judicial independence and the Rule of Law is the existence of an effective disciplinary system for judges. While security of tenure is a corollary of an independent judiciary, independence must not preclude proper accountability of individual judges.

55. It is the JNJ who exercises disciplinary authority over judges and prosecutors at all levels (Article 154.3 of the Constitution). The JNJ is empowered to apply the sanction of destitution, including to Supreme Court judges and Supreme Prosecutors, and may also impose reprimands or suspensions of limited duration. Pursuant to Article 154.3 of the Constitution, disciplinary decisions must be reasoned, adopted following a prior hearing of the interested party, and apply criteria of reasonableness and proportionality. As previously stressed, final resolutions of the JNJ are not subject to judicial review (Art. 154.3 Constitution).

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<sup>44</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor’s Office, para. 89.

<sup>45</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor’s Office, para. 106, recommendation 5.

56. The Venice Commission has previously stated that disciplinary proceedings against judges based on the Rule of Law should correspond to certain basic principles, which include the following: the liability should follow a violation of a duty expressly defined by law; there should be fair trial with full hearing of the parties and representation of the judge; the law should define the scale of sanctions; the imposition of the sanction should be subject to the principle of proportionality;<sup>46</sup> there should be a right to appeal to a higher judicial authority.<sup>47</sup> Similarly, in the 2025 Updated Rule of Law Checklist, the Venice Commission stressed that “[t]he disciplinary system should fulfil the requirements of procedural fairness by including provision for a fair and public hearing and the possibility of an appeal, as a rule before an independent judicial body. Only exceptional circumstances may justify dispensing with a hearing.”<sup>48</sup>

57. The Constitutional provisions entrusting disciplinary proceedings do enshrine that disciplinary decisions must be adopted following a prior hearing of the interested party. Likewise, proportionality is explicitly referred to in the examined provisions. However, the possibility to appeal disciplinary decisions is explicitly precluded, something the Venice Commission has already regretted and recommended it should be addressed.<sup>49</sup> In addition, the Commission reiterates its concern about the composition and appointment of the JNJ.

58. Law No. 32182 proposes a new ground for disciplinary liability, classified as serious misconduct, when the judge orders, by omitting their functional duties, the release of persons detained in flagrante delicto by the National Police of Peru or detained under citizen's arrest for the commission of crimes for which the custodial sentence is greater than five years. The Commission considers this proposal to be problematic for various reasons. European and international standards do not exclude, in principle, the possibility to initiate disciplinary proceedings against judges for acts committed in the exercise of their judicial functions. However, the Venice Commission concludes that framing of this new ground for disciplinary liability in such vague terms is a reason for concern and recommends repealing it.

59. Second, and concerning the specific aggravating circumstance for the conduct of a judge who, maliciously failing to comply with their functional duties, orders or arranges the release of a person detained in flagrante delicto, it should be noted that European and international standards do not exclude, in principle, the possibility of criminal liability of judges for acts committed in the exercise of their judicial functions. However, such liability is accepted only under strict and specific conditions. The Venice Commission has consistently held that criminal responsibility for judicial decision-making may arise only in cases of malice, deliberate intent or gross negligence and, as mentioned above, must not extend to differences in legal interpretation or to judicial error.<sup>50</sup>

60. From this perspective, it is relevant that the amendment introducing a specific aggravating circumstance for the conduct of a judge who orders or arranges the release of a person detained in flagrante delicto expressly recognises malice as a constituent element of the criminal offence. By requiring a malicious failure to comply with functional duties, the provision seeks to align the scope of criminal liability with the fault-based approach reflected in European and international standards.

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<sup>46</sup> Venice Commission, [CDL-AD\(2007\)009](#), Georgia - Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts, para. 9; and [CDL-AD\(2016\)009](#), Albania – Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016), para. 34. See also Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, para 69.

<sup>47</sup> Venice Commission, [CDL-AD\(2016\)009](#), Albania – Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016), para. 34.

<sup>48</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, para. 107.

<sup>49</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, paras 71-76, and 106, recommendation 7.

<sup>50</sup> Venice Commission [CDL-AD\(2019\)028](#), Republic of Moldova - Amicus Curiae Brief on the Criminal Liability of Constitutional Court Judges, paras 25-26.

61. Notwithstanding the foregoing, at issue is whether these grounds for disciplinary and criminal liability are compatible with the principle of international human rights law that pre-trial detention should be an exception, not the rule. The UN Human Rights Committee has consistently stated that pre-trial detention must be an exceptional, strictly necessary, and proportionate measure, based on individualised reasoning and used only when less intrusive alternatives are insufficient, and that failure to provide prompt judicial oversight, concrete justification (such as specific risks of flight, interference, or reoffending), and effective procedural safeguards will render such detention arbitrary under international human rights law.<sup>51</sup> Mandatory detention for persons committing serious crimes in flagrante delicto also raises concern with its compatibility with Article 5 of the ECHR, as interpreted by the European Court, which the Venice Commission regularly uses as a reference standard: pre-trial detention must never be automatic, even in flagrante delicto or serious crimes, and each decision must be individualised, based on concrete evidence of flight risk, interference with justice, risk of reoffending or on the need to preserve public order. Law N° 32182 assumes that pre-trial detention should follow automatically in certain cases (e.g., serious crimes in flagrante delicto) and imposes penalties on judges (and prosecutors) who do not request or order it. The Venice Commission has already expressed its opinion that this provision would not only affect the independence of prosecutors in conducting an investigation, but also violate the rights of the detainees, and recommended it should be reconsidered.<sup>52</sup> It takes this opportunity to recall its previous recommendation, as this ground for liability may also compromise the independence of judges.

62. Lastly, in the context of this Opinion, the Venice Commission also examined Bill No. 8678/2024-CR, which proposed amending Article 35.a)25 of the Rules of Congress to create an Oversight Commission for judges and prosecutors within parliament. The Commission has learned that Legislative Resolution No. 004-2025-2026, approving the Rules of Congress of the Republic of Peru, no longer includes provisions relating to the creation of such a Commission. In the past, the Venice Commission has found it particularly concerning that a law would empower investigative and special commissions of parliament to refer potential disciplinary offences to a body responsible for disciplinary procedures against judges, as this is at odds with the independence of the judiciary.<sup>53</sup> It therefore welcomes that the Peruvian authorities have rejected this proposal.

### **3. Impeachment of Supreme Court judges**

63. Bill No. 9938/2024-CR proposes to amend Article 89 of the Rules of Congress to specify that the constitutional impeachment procedure applies to both preliminary hearings and impeachment trials, pursuant to Article 99 of the Constitution. A replacement text for this Bill was adopted in April 2025 by the Commission on Constitution and Rules. While the initial draft included provisions on the reporting of constitutional complaints and the classification of the defendant's failure to appear as unjustified in the proceedings, these provisions have been dropped in a revised text adopted by the Commission. In contrast, the revised text still includes provisions which empower to suspend a senior official for the duration of the impeachment proceedings.

64. The Venice Commission has already taken a critical stance towards Article 99 of the Peruvian Constitution. While the Commission acknowledged that impeachment of judges is an accepted feature of certain democratic systems in the Americas, it also stressed that

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<sup>51</sup> UN Human Rights Committee: Opinion No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

<sup>52</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 51.

<sup>53</sup> Venice Commission and DGI, [CDL-AD\(2025\)044](#), Ukraine – Joint Opinion on draft amendments on disciplinary procedures against judges, declarations of integrity, and other procedures, para. 67

important safeguards should be in place to ensure impeachment proceedings against senior officials, such as Supreme Court judges and prosecutors, are not politicised.<sup>54</sup> In its Opinion on Article 99 of the Constitution of Peru, the Venice Commission concluded that disciplinary or criminal proceedings against election management bodies must provide “[c]lear grounds of serious disciplinary offences that are clearly, restrictively and exhaustively set out in the law; Fair trial, with the right to submit evidence and right to be heard; Investigating body must be non-partisan and non-political; 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; Appeal to a court of final jurisdiction within a reasonable time-limit should be provided.”<sup>55</sup> These very same recommendations were recalled in its later Opinion on the proposed reforms concerning the Public Prosecutor's Office and the Commission takes this opportunity to reiterate them.<sup>56</sup>

### C. Reforms concerning the diffuse control of constitutionality and conventionality

65. The Venice Commission has consistently noted that there is no single model of constitutional justice. National systems vary significantly and reflect a wide range of institutional arrangements. Both the diffuse control of constitutionality and the concentrated control of constitutionality are valid, each offering specific advantages. The specific formula for articulating constitutional justice in a given country is a matter that falls within the freedom of each State to choose its own constitutional review system. The Commission has generally endorsed the establishment of a constitutional court or equivalent body.<sup>57</sup>

66. The composition of the Constitutional Court and the method for selecting its judges are of critical importance for safeguarding the Court's independence and authority. Involving multiple state organs and political actors in the selection of constitutional judges has proven effective in enhancing the perceived independence of the Court.<sup>58</sup> The composition of the Constitutional Court has to be established in a way which results in the trust of society in the Court as a neutral arbiter.

67. Peru operates a mixed system of constitutional review. Ordinary judges are empowered to exercise diffuse constitutional review in concrete cases, disapplying unconstitutional laws with effects limited to the parties. This power is accompanied by a consultation mechanism with the Supreme Court, whose role is to ensure coherence and consistency within the ordinary judiciary. At the same time, the Constitutional Court exercises concentrated review with general effects. There exist also judicial and constitutional *amparo* appeals. While complex, the allocation of roles is relatively clear and functionally balanced.

68. Peru must respect its international obligations including those deriving from the American Convention of Human Rights and from the case law by the IACtHR. Therefore, in Peru, as in other Latin American countries, national legal measures must respect the doctrine of control of conventionality established by the Inter-American Court, under which there exists, in essence, the obligation of all national authorities (within the scope of their assigned powers) to enforce the rights of the American Convention on Human Rights as interpreted by the Court (in cases referring to the country or to other cases in which the state is not party). Control of conventionality is a cornerstone of the entire Inter-American system of rights protection. Its

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<sup>54</sup> 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, para. 91. See also IACtHR, *Caso del Tribunal Constitucional vs. Perú (Constitutional Court v. Perú)*, Series C No. 71, para. 64(d).

<sup>55</sup> 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, paras 72 and 92 *et seq.*

<sup>56</sup> Venice Commission, [CDL-AD\(2025\)042](#), Peru - Opinion on the proposed reforms concerning the Public Prosecutor's Office, para. 51.

<sup>57</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, para. 132.

<sup>58</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, para. 136 *et seq.*

effectiveness is greater when the judiciary has greater powers to guarantee rights. In the diffuse (or mixed) systems of constitutional review of laws that commonly exist in Latin America, it reaches its greatest potential insofar as it guarantees the validity of the American Convention even in the face of the legislature.

69. According to the Commission's interlocutors, both diffuse constitutionality control and conventionality control enjoy great prestige and public support as a useful formula for the protection of rights in Peru.

70. Bills No. 9171/2024-CR, No. 9638/2024-CR and No. 9676/24-CR reflect an intention to strengthen the role of the Constitutional Court in constitutional adjudication. By requiring judges to suspend proceedings and refer questions of constitutionality to the Constitutional Court, the reform moves the system closer to a concentrated model of constitutional review. Limiting the diffuse review of the constitutionality of laws would restrict the judiciary's power to disapply not only laws that are contrary to the constitution, but also laws that are contrary to the American Convention of Human Rights.

71. This matter is extremely controversial in Peru. The Bills reforming diffuse constitutional review are specifically linked to the non-application of certain specific laws (most notably, but not exclusively, the law that clarifies the scope of the crime of crimes against humanity and war crimes in Peruvian legislation and other so-called "pro-crime" laws<sup>59</sup>) that had been upheld as constitutional by the Constitutional Court. During the meetings in Lima, several judges of the Constitutional Court and members of Congress, as well as part of the academia, argued that ordinary judges should not be able to disapply the laws which have specifically been declared constitutional by the Constitutional Court. By contrast, several stakeholders, notably the judges, part of the academia, and representatives of the civil society argued that a Constitutional Court judgment should not prevent the diffuse control of constitutionality, and in particular the control of conventionality of a law; this represents an important safeguard when judgments of the Constitutional Court appear to be lenient to parliament.

72. The Commission recalls that a State is free to choose its system of constitutional review, and in a system of mixed constitutional review to regulate the respective roles of the concentrated body of judicial review and of the ordinary courts. It recalls in this context that the decisions and judgments of the Constitutional Court must be respected by public authorities and by individuals.<sup>60</sup> At the same time, the domestic legal system must ensure that the state abides by its obligations to respect international law and execute judgments of international courts.<sup>61</sup>

73. However, the Commission underlines that in Peru all the judges of the Constitutional Court are elected by – potentially the same – parliament (though with a qualified majority); the Commission had previously stated that while the "parliament-only" model provides for high democratic legitimacy, appointment of the constitutional judges by different state institutions has the advantage of shielding the appointment of a part of the members from political actors.<sup>62</sup>

74. The appointment by parliament of all the judges risks to make it even more difficult to reach the quorum for declaring a law unconstitutional, which is extremely high (5 out of 7) (Article 5 of Law No. 28301, Organic Law on the Constitutional Court). Furthermore, pursuant to Article 99 of the Constitution, the members of the Constitutional Court may be subject to

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<sup>59</sup> Representative of civil society and from academia met in Lima referred to a group of laws, which they consider to contribute to impunity, as "pro-crime" laws (see, in particular, the discussion of these laws, together with those listed in section C of [CDL-REF\(2026\)004](#), in section D, para. 76 *et seq*, herein).

<sup>60</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, Constitutional review, benchmark G.4.

<sup>61</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist, Legality, benchmark A.4.

<sup>62</sup> Venice Commission, [CDL-AD\(2012\)009](#), Hungary - Opinion on Act CLI of 2011 on the Constitutional Court, para. 8.

Impeachment (*juicio politico*) and may be disqualified from office (and therefore dismissed) by a two-thirds majority of the Congress for ‘infringement of the Constitution’ and for ‘crimes committed in the exercise of their duties’. *Juicio politico* is an exclusively political process that imposes political sanctions. The Venice Commission has previously expressed the view, which has been recalled above, that judges should not be subject to political impeachment, because it exposes them to undue interference by parliament.<sup>63</sup> In this respect, the Commission notes that several interlocutors have raised doubts about the independent nature of certain judgments adopted by the Constitutional Court (in particular, the law that clarifies the scope of the crime of crimes against humanity and war crimes in Peruvian legislation and the so-called “pro-crime” laws). As concerns the proposed filtering mechanism by the Supreme Court, the Commission refers to its opinion (para. 37 *et seq* above) that the proposed reform of the manner of appointment of the judges of the Supreme Court would endanger its independence. Against this background, diffuse control of constitutionality and conventionality represents a more effective check on the powers of the legislature.

75. In the Commission’s view, therefore, the proposed reform in the specific circumstances of the Peruvian context would represent a regression with respect to the existing situation in terms of guaranteeing compliance with the Constitution and with the international obligations, particularly in the area of human rights, of Peru. Limits on diffuse constitutionality control may be accepted when there is a ruling by the Constitutional Court establishing the constitutionality of a law and there is no conventional justification for its non-application by the ordinary judge.

#### **D. Other initiatives and the overall cumulative effect of the reforms**

76. Lastly, although partly related to the issue examined above, there is a group of laws which address different aspects of substantive criminal law, criminal procedure, and asset recovery. More specifically, Law No. 32107 affects the substantive and temporal reach of international crimes in the domestic legal order by excluding the classification of crimes against humanity and war crimes for acts committed prior to July 2002 and by subjecting such acts to ordinary limitation periods. Laws Nos. 32108 and 32138 amend the definition of criminal organisation, redefine the material scope of organised crime offences and adjust investigative powers such as searches, the lifting of bank secrecy and the freezing of assets. Law No. 31990 restructures the effective collaboration regime by introducing strict time limits, modifying corroboration rules, regulating confidentiality and restricting the evidentiary use of collaborators’ statements. Finally, Law No. 32326 reshapes the asset forfeiture system by conditioning forfeiture in most instances on a prior final criminal conviction, limiting precautionary measures, introducing prescription, regulating appeals and extending immediate application to pending proceedings.

77. Individually, several of these reforms may be regarded as technically defensible. Clarifying criminal definitions may enhance foreseeability, a corollary of legal certainty.<sup>64</sup> Introducing stricter evidential safeguards in cooperation proceedings may strengthen due process. Reinforcing property guarantees in forfeiture proceedings may advance legal certainty. The Updated Rule of Law Checklist emphasises the principles of legality, legal certainty, proportionality as essential components of the rule of law.<sup>65</sup> From that perspective, measures aimed at defining offences with precision or reinforcing procedural guarantees are not in themselves incompatible with international standards.

78. Some of these acts, however, merit a more careful examination. As concerns the reform on crimes against humanity, for example, the principle of legality under international human rights law, including Article 9 of the American Convention on Human Rights, does not preclude

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<sup>63</sup> 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, para. 91.

<sup>64</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist.

<sup>65</sup> Venice Commission, [CDL-AD\(2025\)002](#), Updated Rule of Law Checklist.

the prosecution of conduct that constituted a crime under customary international law at the time of its commission. In cases such as *Barrios Altos v. Peru* and subsequent jurisprudence, the IACtHR has emphasized the obligation of States to investigate, prosecute, and punish serious human rights violations and has invalidated domestic measures that generate *de facto* impunity.<sup>66</sup> In this context, excluding pre-2002 conduct from classification as crimes against humanity and subjecting it to ordinary statutes of limitations may raise compatibility concerns, particularly where the underlying acts already satisfied the elements of crimes against humanity under international law and were considered imprescriptible.

79. Likewise, the Venice Commission has also underlined that reforms affecting criminal investigations, evidential tools, and asset recovery must be assessed not only individually but also cumulatively. Where changes simultaneously narrow certain offences, constrain cooperation mechanisms frequently used in complex corruption cases and condition forfeiture on prior convictions while applying new rules to pending proceedings, their combined effect may influence the practical capacity of judicial operators to address serious and organised crime effectively. Even in the absence of explicit intent to shield particular actors, the systemic impact of overlapping reforms may affect equality before the law and the effectiveness of judicial protection. For that reason, a holistic examination against the benchmarks of legality, legal certainty, prevention of misuse of powers and effective access to justice is indispensable to ensure that legislative reforms strengthen rather than inadvertently weaken judicial independence and the fight against impunity.

80. In the Updated Rule of Law Checklist, the Venice Commission states that “[t]he disproportionate and unjustified interference of the legislative and executive powers in the administration of justice poses a threat to the functioning of the legal system’s checks and balances. At the same time, it endangers the protection of individual rights.”<sup>67</sup> Some national and international experts assess the on-going reforms as an attempt by the Congress to gain control over judicial operators. In the words of some interlocutors met in Lima, “[t]here is a progressive alteration of the constitutional balance of powers; if the judiciary is undermined, democracy is left without a foundation on which to stand.” Whereas it is not in the remit of the Venice Commission to ascertain these claims, or even to examine specific cases of judicial operators who are subject to disciplinary or criminal proceedings, it can neither ignore the possibility that the on-going judicial reforms are taking place in such a context.

81. The Venice Commission further observes that recent years have seen increasing instances of public criticism, disinformation, and delegitimising rhetoric directed at the judiciary and individual judges in Peru. While the judiciary is not immune to public criticism, the Venice Commission has noted in previous Opinions that such attacks, particularly when undertaken by political actors or amplified by disinformation, constitute a worrying warning sign: they have often served as a precursor to proposals for sweeping changes to the judicial system in other countries, and can be used to undermine public trust in, and support for, the courts and independent institutions.<sup>68</sup> The Commission recalls that experience has shown that the undermining of judicial independence is, as a rule, the first and crucial factor in scenarios that undermine the Rule of Law. The Venice Commission has learned that even legal systems that appear stable and robust are not immune to such changes.<sup>69</sup>

82. On the one hand, most of the reforms under examination do not ensure a holistic approach, lack a proper analysis of the problems, and do not follow the sequence of change. The Venice

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<sup>66</sup> IACtHR, *Barrios Altos v. Peru*, Judgment of 14 March 2001, Series C No. 75, paras. 41–44.

<sup>67</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 154.

<sup>68</sup> See, for example, Venice Commission, [CDL-AD\(2017\)031](#), Poland – Opinion on the Draft Act amending the Act on the National Council of the Judiciary, on the Draft Act amending the Act on the Supreme Court, para. 89 (1). The Venice Commission noted that arguments such as “de-communisation” of the judiciary have been used to foster public support for far-reaching reforms, with elements resembling models that undermined judicial independence.

<sup>69</sup> Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, para. 152.

Commission is concerned that this overall context may create a climate in which the judiciary as a safeguard of democracy and human rights is weakened, and so is the overall system of checks and balances.

83. On the other hand, a weakened judiciary may be curtailed from adjudicating on human rights violations, major crimes, and cases of corruption. The reforms examined in this Opinion could risk diminishing the capacity of the judiciary to exercise constitutional and conventional review or to apply international human rights standards as a benchmark. Individually, most of these reforms may not hinder the independence and impartiality of the judicial administration, and may even be perceived as ensuring and safeguarding due process principles in the context of judicial procedures. Cumulatively, however, the Venice Commission fears that these proposals may create risks of impunity for the most serious human rights violations, criminal activities, and cases of corruption. This is a key concern that the delegation heard from many stakeholders during its meeting in Lima.

84. In light of the examined reforms in this Opinion, as well as their cumulative effects, also in view of the reforms concerning the Electoral Management Bodies and the Public Prosecutor, the Venice Commission expresses concern that certain reforms may give rise to risks of departing from established international standards relating to the Rule of Law. The Commission therefore encourages the Peruvian authorities to review these measures with particular attention to compliance with constitutional requirements, international human rights law, and recognised Rule of Law principles. The Venice Commission further recommends the conduct of transparent, inclusive consultations with national stakeholders and the broader public before adopting any reforms impacting the core institutions of the justice system. In this way, Peru can ensure that reforms reinforce, rather than undermine, the Rule of Law, the respect for human rights, and democratic governance.

#### **IV. Conclusion**

85. By letter dated 5 September 2025, the President of the Judicial Branch and the Supreme Court of Peru, Ms Janet Tello Gilardi, requested an Opinion from the Venice Commission regarding a set of constitutional and legislative reforms affecting the Peruvian judiciary.

86. The Venice Commission notes that, since the impeachment of President Castillo in 2022, Peru's Congress has initiated numerous constitutional and legislative reforms, sometimes running in parallel and even overlapping. The resulting situation has been characterised by an intensification of institutional instability and an accumulation of both piecemeal legal amendments and comprehensive reform initiatives, such as those undertaken by the Special High-Level Multi-Party Commission.

87. The Commission further observes that, according to several interlocutors and stakeholders, some of the recent reforms have taken place in a context where concerns have been raised regarding pressure on the judiciary, including political criticism, reputational threats, and isolated incidents of intimidation. It has also been suggested by some that aspects of the legislative agenda could be perceived as increasing the influence of political actors over the judiciary and the Public Prosecutor's Office. While the Commission is not in a position to make determinations on individual cases, it notes that such a context may give rise to risks for the stability of the system of checks and balances and for the effective protection of the Rule of Law.

88. While a number of weaknesses in Peru's judicial system have been widely acknowledged by national authorities and international observers, including issues regarding fragmented institutions, temporary judicial appointments, and case management, the Commission emphasises that any judicial reform must adhere to the fundamental principles of legality, legal

certainty and respect for the independence and impartiality of the courts. The Commission underlines that the approach to reform to date has largely been characterised by a lack of coordination, limited stakeholder engagement and insufficient impact assessment. This risks diminishing confidence in the rule of law and the institutional stability of Peru.

89. The Venice Commission makes the following recommendations:

- A. Following the general elections scheduled for 12 April 2026 and the convening of the new Congress, a comprehensive, inclusive, and transparent judicial reform process should be undertaken. This process should prioritise meaningful engagement with all relevant stakeholders, including members of the judiciary, the legal profession, civil society, and the public at large. Such reform should also be informed by a thorough analysis of the present challenges and should aim at securing broad consensus within society.
- B. Any future reform must guarantee the independence and impartiality of the JNJ, as the body responsible for both the appointment and discipline of judges (and prosecutors). The reform should, at a minimum, ensure that:
  - At least half of the members of the JNJ are serving judges, elected or designated by their peers and representing the diversity within the judiciary;
  - Non-judicial members are appointed following competitive, merit-based, and transparent procedures, with appropriate safeguards, including a period during which individuals who have recently held political office are ineligible;
  - All members of the JNJ benefit from adequate tenure and functional immunity, and are protected from political impeachment.

In line with previous recommendations regarding the prosecutorial system, consideration should be given to the creation of two separate bodies, or at least separate internal chambers, within the JNJ, or any body responsible for both judicial and prosecutorial matters. This would reflect their differing institutional roles and help ensure that disciplinary and appointment decisions are made by those with relevant experience.

- C. The issue of temporary and provisional judicial appointments should be addressed as a matter of priority. The Commission urges the Peruvian authorities to take effective measures to ensure that judges are appointed on a permanent basis, with temporary appointments permitted only in exceptional circumstances, subject to strict criteria, and limited in duration.
- D. The system of periodic ratification of judges and prosecutors should be replaced by a model of ongoing evaluation based on objective criteria.
- E. As similarly raised in the case of prosecutors, disciplinary offences for judges should be clearly defined, distinguishing between unlawful conduct and legitimate discretionary decisions made in good faith.
- F. Decisions of the JNJ with respect to appointments, promotions, and disciplinary matters should be subject to effective judicial review.
- G. The current constitutional and legislative provisions that permit political impeachment of judges, members of the JNJ, and other judicial operators should be reconsidered. Any procedure for removal should be strictly based on objective grounds and

transparent criteria, and accompanied by the right to a fair hearing and judicial appeal. Precautionary limitations during these proceedings should be limited to specific grounds, which should be provided for in the statutory regulations.

90. The Commission also makes the following recommendations:

- H. Any proposals to restrict the power of ordinary judges to exercise diffuse review of constitutionality or compliance with international human rights treaties should be reconsidered. The capacity to ensure that Peruvian law is consistent with the American Convention on Human Rights and the case law of the Inter-American Court remains essential.
- I. Recent and proposed legislative amendments relating to the definition of international crimes, criminal procedure, and asset forfeiture, should be reviewed in light of international obligations. A comprehensive assessment should be undertaken not only of individual measures, but also of their cumulative effect on judicial independence, human rights protection, and the prosecution of serious crime and corruption.
- J. Any ground for disciplinary liability or criminal liability of judges should be precisely defined in law and should preclude liability for judicial decisions, except in cases of malice or gross negligence, in accordance with international standards.
- K. If parliamentary involvement in judicial appointments is pursued, it should be subject to guarantees of merit-based assessments based on objective criteria (with the involvement of an independent body) as well as robust safeguards, including qualified majorities and well-defined anti-deadlock mechanisms.

91. Other recommendations may be found in the body of the Opinion.

92. The Venice Commission remains at the disposal of the Peruvian authorities for further assistance in this matter.