



Strasbourg, 19 September 2019

CDL-REF(2019)025

**Opinion No. 964 / 2019**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**PERU**

**CONSTITUTIONAL REFORM BILL TO  
PROHIBIT THE CANDIDACY OF THE PERSON HOLDING THE  
PRESIDENTIAL OFFICE  
AND TO CALL FOR EARLY GENERAL ELECTIONS**

**AS WELL AS**

**THE EXPLANATORY STATEMENT**

*Bill No. 4637/2019-PE*

“Decade of Equal Opportunities for Women and Men”  
“Year of the Fight against Corruption and Impunity”

Lima, July 31<sup>th</sup>, 2019

**OFFICIAL LETTER No 204-2019-PR**

**Mr. PEDRO CARLOS OLAECHEA ÁLVAREZ-CALDERÓN**  
President of the Congress of the Republic

It is my great pleasure to extend my warmest regards to you and submit the “Constitutional reform bill to prohibit the candidacy of the person holding the presidential office and to call for early general elections” announced in the last address delivered by the President on July, 28, 2019 and approved in the Cabinet session today.

This proposal is of the utmost importance. Within the framework of the due process set forth by the Constitution and the faculty of constitutional reform initiative entrusted to the President of the Republic, we would really appreciate if you would have it processed with the urgency it deserves, pursuant to the article 105 of the Political Constitution of Peru. Thus, the Congress may debate and pass this proposal, which will then be submitted for the approval of our citizens via a referendum. Please find attached the text of the said constitutional reform bill.

I avail myself of this opportunity to renew the assurances of my highest consideration

Yours sincerely,

(illegible signature)

**MARTIN ALBERTO VIZCARRA CORNEJO**  
President of the Republic of Peru

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**SALVADOR DEL SOLAR LABARTHE**  
President of the Cabinet

**CONSTITUTIONAL REFORM BILL  
TO PROHIBIT THE CANDIDACY OF  
THE PERSON HOLDING THE  
PRESIDENTIAL OFFICE, AND TO  
CALL FOR EARLY GENERAL  
ELECTIONS\***

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

THE CONGRESS OF THE REPUBLIC

Has enacted the following Law:

**CONSTITUTIONAL REFORM BILL TO PROHIBIT THE CANDIDACY OF  
THE PERSON HOLDING THE PRESIDENTIAL OFFICE, AND TO CALL FOR  
EARLY GENERAL ELECTIONS**

**Article 1: Purpose**

The aim of this Law is to amend the Article 112 of the Political Constitution of Peru, in order to determine that the person who takes the oath and assumes the presidential office may not run again for immediate re-election. It also establishes to shorten the terms of the President of the Republic, the Members of the Congress of the Republic, and the representatives to the Andean Parliament, as well as to call for early General Elections.

**Article 2: Amendment of Article 112 of the Political Constitution of Peru**

Article 112 of the Political Constitution shall be amended as follows:

*Article 112: The presidential term of office lasts five years. There is no immediate re-election. A former president may run again following at least one constitutional term, subject to the same conditions.*

*The citizen who has taken oath as President of the Republic during a term may not run again for the immediate presidential re-election either.*

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\* T.N.: This document was translated from Spanish into English by the Translation Office of the Congress of the Republic (PZZ/EVR/JGG).

**Article 3: Addition of Special Transitory Provisions to the Political Constitution of Peru**

The following Special Transitory Provisions shall be added to the Political Constitution of Peru:

*Special Transitory Provisions*

*Fourth: The incumbent President and the Vice-president of the Republic end their terms on July 28, 2020. The Members of the Congress of the Republic and the Members of the Andean Parliament elected on the 2016 General Elections finish their terms on July 26, 2020.*

*Fifth: General Elections for President and Vice-Presidents of the Republic, Members of the Congress, and Members of the Andean Parliament elected in 2020 shall take place on the third Sunday in April, 2020. Other legal terms set forth by the Organic Law of General Elections and the Political Organizations Law shall not apply to this election process. The National Elections Court, the National Office of Elections and the National Identification and Civil Status Registry shall adjust their terms so that the elections may be held in the established dates.*

*Sixth: The President, the Vice-Presidents of the Republic, the Members of the Congress, and the Members of the Andean Parliament shall hold office for a period of five years, according to Articles 90 and 120 of the Political Constitution.*

*Seventh: The penultimate paragraph of Article 4 of the Organic Law of Elections shall not apply to the political reform laws enacted prior to the 2020 Call for Elections, and which do not alter the established electoral calendar in this constitutional reform.*

Be it thus notified to the President of the Republic, so that he may call for a referendum, according to Article 206 of the Political Constitution of Peru.

Given in Lima, on ..... 2019.

MATÍN ALBERTO VIZCARRA CORNEJO  
President of the Congress of the Republic

SALVADOR DEL SOLAR LABARTHE  
President of the Cabinet

**CONSTITUTIONAL REFORM BILL TO PROHIBIT THE CANDIDACY OF  
THE PERSON HOLDING THE PRESIDENTIAL OFFICE, AND TO CALL FOR  
EARLY GENERAL ELECTIONS**

**EXPLANATORY STATEMENT**

**I. PERUVIAN GOVERNMENT SYSTEM**

As in most of Latin American countries, the Peruvian form of government has been a presidential system (President of the Cabinet, legislative initiative powers for the Executive Branch, ministerial endorsement, etc.), since its origins. Later on, different elements of the parliamentary system were added (political control of the Executive by the Parliament).<sup>1</sup>

**Figure No. 1: Summary of the control mechanisms in Peruvian Constitutions**

Control mechanisms in Peruvian Constitutions											
1823	1826	1828	1834	1839	1856	1860	1867	1920	1933	1979	1993
	Law objection and insistence					Interpellation	Ministerial Censure	Vote of confidence		Dissolution of Congress	Vote of confidence ballot
											Question period

Source: Bill No. 4185/2018-PE

A form of government is defined as “the reciprocal position of the various constitutional bodies of the State”<sup>2</sup>. From this point of view in a strict sense (a system of government approach), presidential and parliamentary systems have been identified according to the powers attributed to the Executive and the Legislature, as to the existence of reciprocal controls between them, and, especially, in the case of the former, whether they come directly, or only indirectly (if they were elected by Congress) from a popular election.

<sup>1</sup> Cf. Explanatory Statement Bill No. 4186/2018-PE submitted by the Executive Branch on April 10, 2019, within the framework of the constitutional reform.

<sup>2</sup> BISCARETTI DU RUFIA, P. *Introducción al derecho constitucional comparado. Las formas de Estado y las formas de gobierno. Las constituciones modernas. 1988-1990: un periodo de profundas transformaciones constitucionales en Occidente, en la URSS y en los estados socialistas del este europeo*. México, FCE, 2000, p. 223.

TN.: Our translation.

In Peru, the addition of control mechanisms between the Executive and the Legislature “created a system of government that maintained the features of the presidential rule, but that has been turning into a parliamentary system”.<sup>3</sup>

This system of government has been classified in different ways<sup>4</sup>, such as “a hybrid system of government”<sup>5</sup>, one of “presidential preponderance”<sup>6</sup> or an attenuated presidentialism<sup>7</sup>, one that tries to achieve “...greater political control over the governmental activity, and a better understanding between the Executive and the Legislature”; therefore, “a set of European Parliament institutions have been inserted.”<sup>8</sup>

The Peruvian model of government shows characteristics from both systems:

- The President of the Republic is elected by the people.
- The President of the Republic is the Head of the State and Government. The system provides for a President of the Cabinet, and Ministers of different sectors.
- The Congress of the Republic is elected by the people.
- There are political control mechanisms such as the ministerial censure (voted by the Congress) or the vote of confidence (requested by a Minister or the President of the Cabinet).
- The President of the Republic has the power to dissolve Congress.

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<sup>3</sup> Explanatory statement Bill No. 4186/2018-PE (Indeed, the addition of control mechanisms between the Executive and the Legislature “has been creating a system of government that maintained the own features of the presidential rule, but that has been turning into a parliamentary system. Some institutions have been successfully established, such as the interpellation and ministerial censure; while others, such as the question period, have not been integrated in the political system with equal success.

<sup>4</sup> Explanatory statement Bill No. 4186/2018-PE.

<sup>5</sup> Bernales, E. y Otárola, A. (1986). *Constitución Política Peruana de 1993. Análisis comparado*. Lima; Ediciones Constitución y Sociedad.

<sup>6</sup> García Belaunde, D. (1991). «Forma de gobierno en la Constitución peruana». En *Revista de Estudios Políticos*, N°74. Madrid: Centro de Estudios Políticos y Constitucionales, pp. 615-634.

<sup>7</sup> Eguiguren Praeli, F. (2007). *La responsabilidad del Presidente: razones para una reforma constitucional*. Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú (PUCP).

<sup>8</sup> García Toma, V. *Análisis sistemático de la Constitución de la Constitución peruana de 1993*. Lima: Universidad de Lima, 1998, p. 218.

## 2. RE-ELECTION OF THE PRESIDENT OF THE REPUBLIC AND THE AMENDMENT OF ARTICLE 112 OF THE POLITICAL CONSTITUTION

### 2.1. The President of the Republic and the presidential re-election in Peruvian Constitutions

Throughout the Peruvian Constitutions, the presidential term and the re-election of the President of the Republic have been ruled as follows:

Constitution	President of the Republic
Constitution of 1823	Article 74: The exercise of the Executive Power has no lifetime tenure, and in no way is an inheritance position. The President term of office lasts four years, and may not fall on the same person, unless another four years have passed.
Constitution of 1826	Article 77: The exercise of the Executive Branch resides in a Life President, a Vice-President, and four Secretaries of State.
Constitution of 1828	Article 84: The exercise of the Executive Power cannot be lifelong, and by no means, hereditary. The term of office of the President of the Republic shall be four years, and may be re-elected once for the next immediate term, and later on, after one equal constitutional term.
Constitution of 1834	Article 74: The term of office of the President of the Republic shall be four years, and no citizen may be re-elected unless one equal constitutional term has passed.
Constitution of 1839	Article 78: The term of office of the President of the Republic shall be six years, and no citizen may be re-elected unless one equal constitutional term has passed.
Constitution of 1856	Article 80: The President shall hold his office during the term of four years, and, he may not be re-elected President or Vice-President, unless one equal constitutional term has passed.
Constitution of 1860	Article 85: The President shall hold his office during the term of four years, and may not be re-elected President or Vice-President, unless one equal constitutional term has passed.

Constitution of 1867	Article 76: The President shall hold his office during the term of five years, and may not be re-elected, unless one equal constitutional term has passed.
Constitution of 1920	Article 70: The Legislative Branch will be totally renewed, and will necessarily coincide with the Executive Branch renewal. The term of office for both Branches lasts five years. Senators, Members of Parliament, and the President of the Republic are elected by popular vote. Article 113: The term of office of the President of the Republic shall be five years, and no citizen may be re-elected unless one equal constitutional term has passed.
Constitution of 1933	Article 139: The presidential term lasts five years and starts on July 28 of the year the elections were held, even if the elected President has not assumed his office on that date.
Constitution of 1979	Article 205: The presidential term of office lasts five years. For the re-election, a presidential term must have passed.

The rules have ranged from just authorize a mediate (alternate) re-election (after a full term has passed), to an immediate re-election only once, to banning immediate presidential re-election.

## 2.2. THE CURRENT CONSTITUTION

Article 112 of the Constitution has been modified just for banning the immediate presidential re-election. The changes are intended to introduce a system of alternating political power in the immediate following period, without prohibiting the re-election of the citizen who has previously held the office, but after one constitutional term has passed.

Constitution	President of the Republic
Constitution of 1993 (original text)	Article 112: The presidential term of office lasts five years. <b><u>The President may be reelected immediately for an additional term.</u></b> A former president may run again following at least one constitutional term, subject to the same conditions.
Constitution of 1993 (Amended by Law No. 27365, published on November 5, 2000)	Article 112: The presidential term of office lasts five years. <b><u>There is no immediate re-election.</u></b> A former president may run again following at least one constitutional term, subject to the same conditions.



Even when the last amendment has established that the President may not be immediately re-elected, it may also be construed that this prohibition extends to the Vice-President that has assumed the presidential office, as in the current situation. The same would happen to any citizen sworn in as President —according to Article 115 of the Constitution that sets forth succession rules relating to taking office of the President of the Congress due to the President's and Vice-Presidents' resignation, and to immediately call for elections. There is no unanimous consensus whether these elections are for the Presidency, the Congress, and the Andean Parliament, or just for the presidential group; or concerning the duration of the term in office (five years or just to complete the remaining term).

Therefore, it is necessary to establish that the citizen who has taken office as President of the Republic (regardless of his/her position) may not run for the same office in the next elections process.

### 2.3. BACKGROUND

As we can see, Article 112 of the Constitution states that the presidential term of office lasts five years, and there is no immediate re-election. It also establishes that a former president may run again subject to two conditions: i) following at least a constitutional term and ii) he/she shall run under the same conditions.

Due to the uncertainty related to the scope of this prohibition over the vice-presidents or any other person who has taken the office of President of the Republic, different initiatives have been introduced in Parliament. Some of these, coming from the Executive (to regulate the President's decision to be considered within this prohibition) and others from parliamentarians who want to specify who is banned to run for office.

**Constitutional Reform Bills to prohibit the candidacy of the  
person holding the presidential office**

CURRENT POLITICAL CONSTITUTION	BILL SUBMITTED BY EXECUTIVE BRANCH (4158/2018-PE)	BILL SUBMITTED BY FUERZA POPULAR POLITICAL PARTY (4362/2018-CR)	BILL SUBMITTED BY FUERZA POPULAR POLITICAL PARTY (4368/2018-CR)
<p>Article 112: The presidential term of office lasts five years. There is no immediate re-election. A former president may run again following at least one constitutional term, subject to the same conditions.</p>	<p>Article 112: The presidential term of office lasts five years. There is no immediate re-election. A former president may run again following at least one constitutional term, subject to the same conditions.</p> <p>A person may not be elected as President of the Republic, in an immediate term, if he/she has held the presidential office, for whatever reason.. This prohibition does not apply to Vice-President, when he/she has held the position for less than four months, during the last year of the presidential office.</p>	<p>Article 112: The presidential term of office lasts five years. There is no immediate re-election. A former president may run again following at least one constitutional term, subject to the same conditions.</p> <p>A person may not be elected as President of the Republic, in an immediate term, if he/she has held the presidential office, for whatever reason.</p>	<p>Article 112: The presidential term of office lasts five years. There is no immediate re-election.</p> <p>The following citizens are banned to run for elections:</p> <p>a. The Vice-Presidents of the Republic</p>
			<p>b. He/she who was vacated of presidential office, on grounds of items 2, 3, 4 and 5 of Article 113 of the Political Constitution of Peru.</p> <p>c. He/she who was suspended from the presidential office on grounds of Article 114 of the Political Constitution of Peru.</p> <p>d. He/she who holds the presidential office, under any legal circumstances.</p>

Source: Bills (Congress of the Republic of Peru)

The Bill No. 4185/2018-PE introduced by the **Executive Branch** presented a proposal for constitutional reform aimed at defining mechanisms to appropriately lead the democratic governance and the relationship between the Executive Branch and the Congress. The aim of the bill is to reform Article 112 of the Political Constitution in order to set forth that the citizen holding the Presidential office may not run for the Presidency in the next immediate term. This legal formula contained a prohibition for the Vice President to run for presidential office if he/she has held the position of President for at least four months. However, following the debate of this proposal in the Committee on Constitution and Standing Rules, doubts were raised regarding a hidden intention by the current President to go for re-election despite the prohibition included. While this intention has been completely dismissed, a new modified formula is presented. So, now it includes a restriction for a person who takes the oath for the office of President of the Republic, as is the case of the incumbent President of the Republic.

Later on, congressmen of the Fuerza Popular political party submitted two bills on this same matter (Bill No. 4362/2018-CR and 4368/2018-CR). In the first one, they proposed that although Article 112 of the Political Constitution states that the presidential term of office lasts five years and the immediate re-election is prohibited, it does not state if this prohibition includes the Vice-Presidents who assume the position of President of the Republic in a temporary or provisional manner. And while the last paragraph of Article 111 of the Constitution provides that the two Vice-Presidents are elected together with the President, in the same manner, under the same requirements and terms, it is important to specify and set forth that the term of office of the President of the Republic and Vice-Presidents is bound by the same conditions, so that the Vice-Presidents are subject to the same prohibitions as the President, as well.

Regarding the Bill No. 4368/2018-CR, it is mentioned that while the 1993 Constitution does not permit an immediate re-election, the impediments to run for President of the Republic are not clearly established, as it happened in the previous Political Constitution. Additionally, it said that if re-election is prohibited, the fight against corruption would be reinforced. Furthermore, it pointed out that the best way to guarantee democracy is to alternate in power, so it proposed that the Vice-Presidents may not run for the office of President of the Republic, and also prohibits the candidacy of the person holding the presidential office, thus preventing recidivism in the election process.

## 2.4 COMPARATIVE LAW ON PRESIDENTIAL RE-ELECTION

In Comparative Law, there are several cases of immediate, alternate and prohibited re-election for the Presidency of the Republic.<sup>9</sup> The immediate re-election allows for the President to run immediately after his/her term of office is concluded. The alternate re-election –or mediate- allows for re-election after an interval of at least one term of office. The prohibited re-election prevents re-election under any circumstances.

In order to show how the presidential re-election has been regulated in Comparative Law, we have chosen five Latin American countries with different re-election models.

Given the particular relevance on this matter, Colombia, Chile, Argentina, Bolivia and Ecuador have been taken into account for this analysis.

Country	Immediate re-election	Alternate re-election	Prohibited re-election
Colombia			X
Chile		X	
Argentina	X		
Ecuador	X		
Bolivia	X		

Source: Constitutions of each country

The Constitution of Colombia of 1886 allows for alternate re-election. This provision was subsequently amended by 1991 Constitution, where the re-election was prohibited.

This situation changed in 2004, when the Congress of that country passed the immediate presidential re-election for only one term. The context related to this decision was the re-election of former President of the Republic, Álvaro Uribe, who then enjoyed great popularity due to his military success against the guerrilla Revolutionary Armed Forces of Colombia (FARC). A complaint of unconstitutionality was filed with the Constitutional Court of Colombia, which rejected it, so Mr. Uribe was able to run for the Presidency and was elected for 2006-2010 term. However, the Congress refused to amend the Constitution in order to allow for a new re-election and the Constitutional Court also rejected an initiative to promote a referendum on that matter.

<sup>9</sup> CARDENAS, Ernesto and CORREDOR, Federico. The Constitutional judge and presidential re-election in Latin America, in *Journal of Institutional Economics*, Vol. 10, No 38, 45 and subsequent.

In 2015, the former President of Colombia Juan Manuel Santos promoted a legislative initiative to return to the previous regulations that prohibited re-election as a form to prevent a person who holds the presidential office from taking advantage of his or her position to achieve an electoral gain over his or her political rivals in case he or she may run for another term of office.

In Chile, the Constitution of 1980 allows for alternate re-election, after an interval of at least one presidential term. Article 25 states that “the President of the Republic shall hold office for a term of four years and may not be reelected for the consecutive period”.

On the other hand, in Argentina, the Constitution of 1994 authorizes the immediate re-election for one period. Article 90 stipulates the following: “The President and Vice President shall remain in office for a term of four years and may be reelected or succeed each other for only one consecutive term”.

In Ecuador, the current President of the Republic called for a referendum in order for the citizenship to decide on various issues of public interest, such as the prohibition of indefinite re-election. Thus, on February 4, 2018, Ecuadorians approved to reform the Constitution, so all elected authorities, including the President and the Vice President of the Republic, may be re-elected only once, and not indefinitely. So, Article 114 of the Constitution today stipulates that the President of the Republic shall remain four years in office and may be reelected only once, according to the people’s decision in that voting process.

In Bolivia, Article 168 of the Constitution provided that the President and Vice President of the Republic might be reelected once for an immediate term. However, a referendum was held in 2016, upon citizens’ demand, to permit the indefinite presidential re-election. The result was that 51.3% of Bolivians voted against the proposal, while 48.7% voted in favor. In spite of this result, the Plurinational Constitutional Court in 2017 ruled that the President had the right to run for re-election. Thus, in 2018, the Supreme Electoral Court authorized the candidacy of current President Evo Morales who won the elections and began his term in office in 2006.

Now, it must be pointed out that, in general terms, the trend observed in most countries of the region is to progressively limit re-election more and more based on the historical and political background of several of our countries. There have been many efforts in that sense, not always successful, though. Generally, the concentration of power and the use of government resources to promote and enhance the image of the incumbent President has always been a latent risk that should be avoided. That is the reason why in the Peruvian case we have chosen to prohibit the immediate re-election of the President, and through this bill we intend to extend this

prohibition to any person who holds the presidential office, as is the case with the current President.

### 3. EARLY GENERAL ELECTIONS FOR THE YEAR 2020

#### 3.1 LEGAL GROUNDS OF THE PROPOSAL

This bill is submitted by the Executive Branch and intends to dispel any doubts concerning the intention of the current President of the Republic, formerly elected Vice President, to stay in power, and to set forth transitory provisions for the authorities elected in the 2016 General Elections in order to hold elections in 2020 so that the newly elected representatives (President, Vice-Presidents, Congress members, and Andean Parliament representatives) may take office in July of that year (2020).

Now, it is fundamental to describe the context in which this constitutional reform to call for early general elections for 2020 has been submitted.

The early call for elections is the optimal mechanism to overcome the current political crisis, when we already perceive a notable difficulty to find consensus between the Executive and the Legislature, in detriment of the citizenry.

Therefore, we believe we need to make a decision to cause a renewal of our political class and strengthen our institutions, but most of all optimize the relationship between the Executive and the Legislature, which in turn shall result in a better representation of the citizens. This shall help to improve the citizens' confidence in our politicians.

As stated in the last presidential address on July 28, 2019, this proposal is not meant to be an attack against the Congress, nor is outside of the provisions of the Political Constitution. On the contrary, it is based on the rules governing constitutional reform. It is specifically based on Article 206 of the Constitution that authorizes the President of the Republic to submit a constitutional reform bill which, as a rule, must first be passed by Congress and then ratified by a referendum<sup>10</sup>.

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<sup>10</sup> Any initiative of constitutional reform must be adopted by Congress through an absolute majority of the legal number of its members, and must be ratified by a referendum. The referendum may be exempted when the consent of Congress is obtained in two successive regular sessions, with a favorable vote of greater than two-thirds of the legal number of congressmen in each case.

A law concerning a constitutional reform shall not be objected to by the President of the Republic. The right to initiate a constitutional reform corresponds to the President with the approval of the Cabinet, to congressmen, and to a number of citizens equivalent to three-tenths of a percent (0.3%) of the voting population, with their signatures being verified by the corresponding electoral authority. (Emphasis added).

This reform bill intends to shorten not only the presidential and congressional terms of office, but also those of the Andean Parliament representatives. In this latter case, their term shall end on July 26, 2020, together with that of the Congress members.

The inclusion of Andean Parliament in the elections to be held in April of 2020 is in response to the need to hold one general election for multiple purposes so all elections for national representation offices are to be held in a single date, with the only exception of the second presidential vote ("second round"), which is justified for the especial legitimacy intended for the elected President.

The Article 20 of the Organic Law of Elections states that the elections for Congress members are held together with the election of the President and Vice-Presidents of the Republic. Ever since 2006, along with these two elections we also choose representatives to the Andean Parliament.

According to Article 2 of the Andean Parliament Treaty<sup>11</sup>, signed by Peru, there is an obligation of the State Parties to hold an election to choose the country's representatives. Peru has fulfilled its obligations in that respect by enacting the Law No. 28360, Law on the Elections of Representatives to the Andean Parliament.

Previously, the election system for these representatives was through appointment within regular members of Congress. However, the cited Peruvian law established that the representatives shall be elected directly by the Peruvian people on the occasion of the other elections, and that has been our practice since 2006.

Consequently, we believe that as long as Peru is a party to this Treaty is important to continue holding simultaneous elections for President, Vice-Presidents, Congress Members and Andean Parliament representatives, and that is the reason we included this election in our proposal to call for early general elections in 2020.

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<sup>11</sup> Article 2.- The Andean Parliament shall be comprised of representatives of the peoples of each of the contracting parties elected by Universal and Direct Vote, in accordance with the procedure to be adopted by the member States through an Additional Protocol, that shall include appropriate criteria for national representation agreed by the Parties

## 3.2 BACKGROUND

### 3.2.1 CONSTITUTIONAL REFORM

An antecedent taken into consideration to introduce this proposal now as a constitutional reform bill was the Law No. 27365, and which is included in the first special transitory provision in the current constitution.

According to this statute, published on November 5, 2000, the Congress passed in a second regular session a constitutional reform to shorten the presidential and congressional terms of office from five years to one year, and that allowed for the democratic transition led by the then President of Congress, Mr. Valentin Paniagua Corazao, who was later sworn in as President of the Republic.

At that time, this law provided for the amendment of article 112 of the Political Constitution to shorten the term of the presidential and congressional mandates<sup>12</sup>.

This antecedent is important because in 2000 it was an effective mechanism that generated wide acceptance within the political forces to allow for an early call for general elections (President, Vice-Presidents and Congress members)<sup>13</sup>. It was, then, a reform that had, and still has, full constitutional support.

### 3.2.2 BILLS

There are other similar antecedents in this congressional period. The Accion Popular parliamentary group introduced in March of 2018, the Bill No. 2614/2017-CR, to reform the Constitution by adding two special transitory provisions to shorten the terms of office of the President, Vice-Presidents, and Congress Members elected in 2016. The provisions stated that the President and Vice-Presidents elected in July 2016 would end their mandate on July 28, 2019, while the Congress Members would finish their representation on July 26, 2019.

Likewise, the Frente Amplio por la Justicia, Vida y Libertad parliamentary group introduced in October of 2018, the Bill No. 3482/2018-CR, to reform the special transitory provisions of the Constitution in order to call for general elections in 2019, thus shortening the term of office of the President, Vice-Presidents, and Congress members to July 28 of the current year.

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<sup>12</sup> It also adds a second special transitory provision stating that in regard to the 2001 election process, the term set forth in the first paragraph of article 91 of the Constitution (concerning those who cannot stand for congressional elections if they have not resigned their posts six months prior to the elections) shall be four months.

<sup>13</sup> This consensus is patent in the interventions of congress members of different parties, compiled in the Journal of Debates of the sitting of the Plenary Session of Congress on October 5, 2000.



Hence, the situation experienced in 2000 as well as the above-cited proposals to amend the constitutional text introduced by different political groups, show the following: i) the existence of antecedents which sought to amend the term of office of the President, Vice-Presidents, and Congress members (even in this period of government); and ii) the constitutionality of the proposal submitted.

This measure entails an extraordinary challenge for our political class: to put a higher political objective: regain governance for the country and have political representatives who can enjoy citizen support, ahead of their private interests, thus strengthening our democratic institutions particularly now that the bicentennial of our independence approaches.

#### **Constitutional reform bills presented to call for early general elections**

<b>Bill introduced by the Accion Popular parliamentary group (2614/2017-CR)</b>	<b>Bill introduced by the Frente Amplio por la Justicia, Vida y Libertad parliamentary group (3482/2018-CR)</b>
The President and the Vice-Presidents elected in the 2016 General Elections shall end their mandates on July 28, 2019. The Congress Members elected in the same election process shall end their representation on July 26, 2019.	The President and the Vice-Presidents of the Republic elected in the 2016 General Elections shall end their mandates on July 28, 2019. The Congress Members elected in the same election process shall end their representation on July 26, 2019.

Source: Bills (Congress of the Republic of Peru)

#### **4. THE NEED OF A REFERENDUM**

With the purpose of making the democratic vocation of this proposal transparent, and abiding by the Constitution, we request that this constitutional reform bill be passed by Congress in a first voting, and then be ratified by a referendum so that the citizens may have the chance to participate directly in this decision.

The referendum, as a fundamental right, is recognized in item 17 of Article 2, and in Article 31 of the Political Constitution of Peru.

The Constitutional Court has defined the referendum as the procedure through which the people or the electorate decides, directly and definitively, matters related to the legislation. Additionally, it stated that through the referendum the people takes part in the constitutional, legislative or administrative activity, thus directly contributing to the formulation or reform of a constitutional or legal provision, or in the formation of an administrative act<sup>14</sup>.

<sup>14</sup> STC Exp. No. 0003-1996-AI/TC

In other words, the referendum includes manifestations of direct democracy within the representative democracy that governs in our country, and allows for the citizens to participate in the decision-making process, with a view to deciding if certain legislative initiatives should or should not enter into force.

Article 206 of the Constitution provides for the procedures to reform the Constitution by stating that in the first place a **constitutional reform initiative must be first passed by the Congress of the Republic by an absolute majority of the legal number of Members, and then ratified by a referendum**. That is the general rule. However, alternatively, it allows for avoiding the referendum if the Congress passes the proposal in two successive regular sessions with a favorable voting higher than the two thirds of the legal number of Congress members.

Likewise, item 1 of article 32 of the Political Constitution of Peru establishes that it is possible to submit the total or partial reform of the Constitution for a referendum.

In accordance with item 5 of article 118 of the Constitution, the referendum is called by the President of the Republic at least sixty (60) days before holding the vote, as established in article 82 of the Organic Law of Elections. This law applies to all kinds of general votes initiated by someone other than the citizens, such as this one that it has been initiated by the President of the Republic, and similarly to the 2018 referendum, held on December 9 of that same year.

Therefore, it is a fundamental right that allows for an effective citizen participation in the most relevant decision-making process in the country, which gives it greater legitimacy. A decision to amend the Constitution through a single question subject to referendum requires that the people express their consent or rejection, and that is why the Executive Branch supports this referendum.

#### 4.1 ELECTORAL CALENDAR

Additionally, this proposal to call for early elections needs to be supplemented with the adjustment of the current electoral calendar. Consequently, the bill states that the terms set by the Organic Law of Elections (OLE) shall not apply to the 2020 General Elections.

Currently, the call for General Elections (GE) must be made 270 days before the voting day, according to article 82 of the Organic Law of Elections. This law was recently amended by Law No. 30673, published on October 20, 2017.

Therefore, the 2016 General Elections were called abiding by the previous term: between 120 and 150 days before the voting day. The same happened in earlier elections.

**2006 General Elections – 2016 General Elections: Announcement**

Statute	Convocation	Application in elections
OLE 82 (previous version to the current legislation)	Not sooner than a hundred and twenty (120) natural days, and not later than a hundred and fifty (150) days	2006 GE (Executive Order No.096-2005-PCM, published on December 8, 2005)
		2011 GE (Executive Order No. 105-2010-PCM, published on November 14, 2015)
OLE 82 (amended by Law No. 30673, published on October 20, 2017)	270 days before the voting day	Not yet applied.

Source: Portal of the National Elections Court, and the Organic Law of Elections

The 120-day term (or four months), considered now for the early call of elections, is the same as another provision in the Constitution: the elections subsequent to the dissolution of the Congress of the Republic, in accordance with article 134 of the Constitution<sup>15</sup>.

There are equally exceptional circumstances that allow for electoral agencies (the National Elections Court, the National Office of Elections, and the National Register for Identification and Marital Status) to adjust dates and terms so that they can hold the elections according to the bill. This coordination also took place in the 2018 National Referendum where the electoral agencies were given this power so that they could act according to their faculties.

Now, according to the assessment of this proposal made by the Executive, we think that even though it is necessary to adjust terms, it is possible to adapt the electoral calendar for the approval of this constitutional reform through a referendum.

Therefore, we have suggested the following timetable (to make the election viable in accordance with our proposal):

<sup>15</sup> Article 134 - The President of the Republic has the power to dissolve Congress if it has censured or denied its confidence to two Cabinets.

The dissolution decree shall contain a call for the election of a new Congress. Such elections shall be held within four months of the dissolution of Congress, without any alteration of the existing electoral system.

Congress may not be dissolved during the last year of its term. Once Congress is dissolved, the Permanent Assembly, which may not be dissolved, continues exercising its functions.

There is no other form to revoke parliamentary mandate.

Under a state of siege Congress may not be dissolved. (emphasis added)

<b>July 2019</b>	Introduction of the constitutional reform bill
<b>August 2019</b>	Start debate on the constitutional reform bill in Congress
<b>September 2019</b>	Approval of the constitutional reform bill by Congress Convocation to referendum
<b>November 2019</b>	Referendum vote
<b>December 2019</b>	Call for 2020 General Elections
<b>April 2020</b>	2020 General Elections (elections for Congress members, Andean Parliament representatives, and first round of the presidential election)
<b>June 2020</b>	2020 General Elections – second round of the presidential election (if necessary)
<b>July 2020</b>	Newly-elected authorities and representatives take office after being proclaimed by electoral agencies

#### **4.2 THE POLITICAL REFORM AND ITS APPLICATION TO THE 2020 GENERAL ELECTIONS**

The political reform, in spite of a few setbacks, has had progress in the Congress of the Republic during the 2018/2019 regular session, and after the respective processing, it may be applied in the 2020 General Elections.

However, the penultimate paragraph of article 4 of the Organic Law of Elections sets forth the following: “All statutes with force of law, related to electoral processes or plebiscites that are published **one (1) year before the election or voting day, come into effect the day after the publication of the resolution declaring the end of the relevant process**”.

So, with a view to applying a political reform to encourage political participation, and strengthen political organizations, this bill proposes the exoneration of this previous term for the approval of the electoral reforms, in order to allow for its possible application to the 2020 General Elections.

However, we find it essential that this application should not alter the electoral calendar to be approved and allow for holding the elections on the third Sunday of April in 2020, as the goals of overcoming the political crisis, strengthen political representation, and increase citizen confidence, all justify this proposal.

#### **5. COST-BENEFIT ANALYSIS**

The purpose of this initiative is to overcome the climate of political tension that has prevailed recently, with a renovation of the Executive and Legislative Branches, thus contributing to their institutional strengthening and to the economic and social

stability of the country in order to lay the foundations for a sustained growth in the coming years.

The cost of this bill for this year will be financed within the limits authorized by the Law of the Budget for the Public Sector for the Fiscal Year 2019.

## 6. IMPACT ON THE NATIONAL LEGISLATION

This legal initiative partially amends the Political Constitution in addition to proposing to shorten the mandate of authorities elected in the 2016 General Elections, and call for early general elections for the year 2020, so it will have an impact on the application of the Organic Law of Elections.

Current version of Article 112	Amendments
<p><b>Article 112.</b> The presidential term of office lasts five years. There is no immediate re-election. A former president may run again following at least one constitutional term, subject to the same conditions.</p>	<p><b>Article 112.</b> The presidential term of office lasts five years. There is no immediate re-election. A former president may run again following at least one constitutional term, subject to the same conditions.</p> <p><b>The citizen who under any title has been sworn in as President of the Republic may not run for President in the immediate general elections.</b></p>
	<p><b>Special Transitory Provisions</b></p>
	<p><b>Fourth.</b> The current President and the Vice-President of the Republic shall end their terms on July 28, 2020.</p> <p><b>Congress members and representatives to the Andean Parliament, elected in 2016 General Elections shall end their terms on July 26, 2020.</b></p>

	<p><b>Fifth. The General Elections to choose a President and Vice-Presidents of the Republic, Congress Members, and representatives to the Andean Parliament shall be held on the third Sunday of April in 2020.</b></p> <p><b>The terms provided for in the Organic Law of Elections and the Law of Political Organizations do not apply to this electoral process. The National Elections Court, the National Office for Elections, and the National Registry of Identification and Civil Status shall adjust their terms so that the elections may be held on the set date.</b></p>
	<p><b>Sixth. The President and Vice-Presidents of the Republic, Congress Members, and representatives to the Andean Parliament elected in 2020 shall remain in office for a five-year term, in accordance with articles 90 and 112 of the Political Constitution.</b></p>
	<p><b>Seventh. The penultimate paragraph of article 4 of the Organic Law of Elections do not apply to the laws on the political reform enacted prior to the call for general elections in 2020, and which do not alter the approved electoral calendar in this constitutional reform.</b></p>