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(VENICE COMMISSION)

PERU

POLITICAL CONSTITUTION OF PERU (*)

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() N.T.: Translated from Spanish into English by Juan Gotelli, Esther Velarde and Pilar Zuazo, members of the staff of the Translation Bureau of the Congress of the Republic of Peru.*

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Table of Contents

TITLE I.....	5
THE PERSON AND THE SOCIETY.....	5
CHAPTER I.....	5
FUNDAMENTAL RIGHTS OF THE PERSON	5
CHAPTER II.....	7
SOCIAL AND ECONOMIC RIGHTS.....	7
CHAPTER III.....	11
POLITICAL RIGHTS AND DUTIES.....	11
CHAPTER IV.....	13
PUBLIC SERVICE.....	13
TITLE II.....	14
THE STATE AND THE NATION	14
CHAPTER I.....	14
THE STATE, THE NATION, AND THE TERRITORY	14
CHAPTER II.....	15
TREATIES.....	15
TITLE III.....	16
THE ECONOMIC SYSTEM.....	16
CHAPTER I.....	16
GENERAL PRINCIPLES.....	16
CHAPTER II.....	17
THE ENVIRONMENT AND THE NATIONAL RESOURCES	17
CHAPTER III.....	18
PROPERTY	18
CHAPTER IV.....	18
TAX AND BUDGET REGIME	18
CHAPTER V.....	21
CURRENCY AND BANKING	21
CHAPTER VI.....	22
THE AGRICULTURAL REGIME AND RURAL AND NATIVE COMMUNITIES	22
TITLE IV.....	23
THE STRUCTURE OF THE STATE	23
CHAPTER I.....	23
THE LEGISLATIVE BRANCH	23
CHAPTER II.....	27
THE LEGISLATIVE FUNCTION.....	27
CHAPTER III.....	28
LAWMAKING AND ENACTMENT	28
CHAPTER IV.....	28
THE EXECUTIVE BRANCH.....	28
CHAPTER V.....	30
THE CABINET	30
CHAPTER VII.....	33
STATE OF EXCEPTION	33
CHAPTER VIII.....	33
THE JUDICIAL BRANCH	33
CHAPTER IX.....	36
THE NATIONAL COUNCIL OF THE MAGISTRACY	36
CHAPTER X.....	37
THE OFFICE OF THE PROSECUTOR GENERAL	37
CHAPTER XI.....	38
THE OFFICE OF THE OMBUDSMAN.....	38
CHAPTER XII.....	38

SECURITY AND NATIONAL DEFENSE	38
CHAPTER XIII.....	40
THE ELECTORAL SYSTEM	40
CHAPTER XIV	42
DECENTRALIZATION*	42
TITLE VI.....	50
CONSTITUTIONAL REFORM	50

The President of the Democratic Constituent Congress

Whereas:

As this constitutional draft has been approved by the Democratic Constituent Congress and ratified by a referendum on the 31st of October, 1993,

The Democratic Constituent Congress

Does establish the following Political Constitution of Peru:

PREAMBLE

The Democratic Constituent Congress invoking Almighty God, obeying the mandate of the Peruvian people, and remembering the sacrifice of all the preceding generations of our land, has resolved to enact the following Constitution: 4

POLITICAL CONSTITUTION OF PERU

TITLE I THE PERSON AND THE SOCIETY

CHAPTER I FUNDAMENTAL RIGHTS OF THE PERSON

Article 1

The defense of the human person and respect for his dignity are the supreme purpose of the society and the State.

Article 2

Every person has the right:

1. To life, his identity, his moral, psychological, and physical integrity, and his free development and well-being. The unborn child is a rights-bearing subject in all cases that benefit him.

2. To equality before the law. No person shall be discriminated against on the basis of origin, race, sex, language, religion, opinion, economic status, or any other distinguishing feature.

3. To freedom of conscience and religion, in an individual or collective manner. No person shall be persecuted on the basis of his ideas or beliefs. There is no crime of opinion. Public exercise of any faith is free, insofar as it does not constitute an offense against morals, or a disturbance of the public order.

4. To freedom of information, opinion, expression, and dissemination of thought, whether oral, written, or in images, through any medium of social communication, and without previous authorization, censorship, or impediment, under penalty of law.

Crimes committed by means of books, the press, and any other social media are defined by the Criminal Code and tried in a court of law.

Any action that suspends or closes down any organ of expression or prevents its free circulation constitutes a crime. The rights of information and opinion include those of founding means of communication.

5. To request, without statement of a cause, information he requires, and to receive it from any public entity within the legal term, at its respective cost. 5

Exception is hereby made of information affecting personal privacy and that expressly excluded by the law or for reasons of national security.

Bank secrecy and the confidentiality of tax filings may be lifted by the request of a judge, the Prosecutor General, or a congressional investigative committee, in accordance with the law and provided that such information refers to a case under investigation.

6. to the assurance that information services, whether computerized or not, whether public or private, will not provide information affecting personal and family privacy.

7. To his honor and good reputation, to personal and family privacy, as well as to his own voice and image.

Every person affected by inaccurate statements or injured in any social medium has the right to demand free, immediate, and proportionate rectification, other legal liabilities notwithstanding.

8. To freedom of intellectual, artistic, technical, and scientific creation, as well as to ownership of such creations and to any benefits derived from them. The State promotes access to culture and encourages its development and dissemination.

9. To the inviolability of his home. No one may enter a dwelling or conduct any investigation or search without authorization from the inhabitant or without a warrant, except in cases of *in flagrante delicto* or serious threat of the perpetration thereof. Exceptions for reasons of health or serious risk are governed by law.

10. To the secrecy and inviolability of private communications and documents.

Communications, telecommunications, or any private correspondence may only be opened, seized, intercepted, or tapped by the authority of a warrant issued by a judge and with all the guarantees provided in the law. Any matter unrelated to the circumstances under examination shall be kept secret.

Private documents obtained in violation of this provision have no legal effect.

Books, receipts, and accounting and administrative documents are subject to inspection or audit by the relevant authority in accordance with the law. Any action thus taken may not include removal or seizure, except by a court order.

11. To choose his place of residence, to move freely throughout the national territory, and to leave the country and return to it, excepting restrictions for reasons of health or due to a court order, or to the application of the Immigration Act. 6

12. To peaceful assembly without arms. Meetings on any premises, whether private or open to the public, do not require prior notification. Meetings held in squares and public thoroughfares require advance notification by the relevant authority, which may prohibit such meetings solely for proved reasons of safety or public health.

13. To associate and establish foundations and other forms of not-for-profit legal organizations, without prior authorization, and in accordance with the law. These organizations may not be dissolved by administrative resolution.

14. To make contracts for lawful purposes, whenever they do not contravene laws of public order.

15. To work freely, in accordance with the law.

16. To property and inheritance.

17. To participate, individually or in association with others, in the political, economic, social, and cultural life of the Nation. Citizens, in accordance with the law, have the right to elect, remove or revoke public authorities, and to legislative initiative, and referendum.

18. To keep his political, philosophical, religious, or any other type of conviction private, as well as to keep professional secrets.

19. To his ethnic and cultural identity. The State recognizes and protects the ethnic and cultural diversity of the Nation.

Every Peruvian has the right to use his own language before any authority by means of an interpreter. Foreigners enjoy the same right when summoned by any authority.

20. To submit petitions in writing, individually or collectively, before the competent authority, who is obliged to respond to the interested party also in writing within the legally prescribed term, under penalty of law.

Members of the Armed Forces and the National Police may only exercise their right to petition in an individual manner.

21. To his nationality. No one may be stripped of it. Nor may any person be deprived of the right to obtain or renew his passport inside or outside the territory of the Republic.

22. To peace, tranquility, enjoyment of leisure time, and rest, as well as to a balanced and appropriate environment for the development of his life.

23. To self-defense. 7

24. To freedom and personal security. In consequence:

a. No one is obliged to do what the law does not command, nor prevented from doing what the law does not prohibit.

b. No restrictions whatsoever to personal freedom shall be permitted, except in cases provided by the law. Slavery, servitude, and traffic in human beings are prohibited in any form.

c. There is no imprisonment for debts. This provision does not restrict court orders in the case of contempt regarding child support obligations.

d. No one shall be prosecuted or convicted for any act or omission that, at the time of its commission, was not previously prescribed in the law expressly and unequivocally as a punishable violation, or did not constitute an offense penalized by law.

e. Every person has the right to be presumed innocent until proven guilty.

f. No one may be arrested without a written warrant issued by a judge for a cause or by police authorities in cases of *in flagrante delicto*. The arrested person shall be placed at the disposal of the relevant court within twenty-four hours or within the time required for travel.

In the cases of terrorism, espionage, and illicit drug trafficking, these terms shall not apply.

In such cases, police authorities may make the preventive arrest of those allegedly involved, to last no more than fifteen calendar days. They shall notify the Office of the Prosecutor General and the judge, and the latter may assume jurisdiction before that period of time expires.

g. No one may be held incommunicado, except where it is considered indispensable for the resolution of a crime and in the form and for the time provided by law. The authority is obliged by law to report, without delay and in writing, the place where the individual under arrest is detained.

h. No one shall be a victim of moral, psychical, or physical violence, nor be subjected to torture or inhuman or humiliating treatment. Any individual may immediately request a medical examination for the injured person or someone who is unable to appeal to the authorities by himself. Statements obtained by means of violence are null and void. Whoever employs such violence shall be held liable. 8

Article 3

The enumeration of rights established in this chapter does not exclude others guaranteed by the Constitution, or others of a similar nature or those based on the dignity of the human being, nor those based on the principles of sovereignty of the people, the democratic rule of law, or the republican form of government.

CHAPTER II SOCIAL AND ECONOMIC RIGHTS

Article 4

The community and the State extend special protection to children, adolescents, mothers, and the elderly in situation of abandonment. They also protect the family and promote marriage, which are recognized as natural and fundamental institutions of society.

The form of marriage and the grounds for separation and dissolution are governed by law.

Article 5

The stable union between a man and a woman, free of any impediment to matrimony, who establishes a common-law marriage, creates community property subject to a marital assets regime, where applicable.

Article 6

The national population policy aims to spread and promote responsible parenthood. It recognizes the right of families and individuals to decide. In this spirit, the State guarantees suitable education and information programs and access to such means, provided they do not harm life or health.

It is the right and duty of parents to nourish, educate, and protect their children. Children have the duty to respect and aid their parents.

All children have the same rights and duties. Any mention of the civil status of parents or of the nature of their relationship to the children in civil records or any other identification document is prohibited.

Article 7

Everyone has the right to protection of his health, his family environment, and his community, just as it is his duty to contribute to their development and defense. Any individual unable to

care for himself due to physical or mental disability has the right to respect for his dignity and to a regime of protection, care, rehabilitation, and security.

Article 8

The State fights and punishes illicit drug trafficking. Likewise, it regulates the use of social drugs. 9

Article 9

The State determines the national health policy. The Executive Branch sets standards for and oversees its enforcement, and it is responsible for drafting and directing it in a pluralistic, decentralizing manner to facilitate equal access for everyone to health services.

Article 10

The State recognizes the universal and progressive right of each person to social security for his protection from contingencies specified by law, and for the elevation of his quality of life.

Article 11

The State guarantees free access to health benefits and pensions through public, private, or joint agencies. It also oversees their efficient operation.

The law establishes the agency of the national government that manages the pensions systems under the charge of the State.*

** Paragraph added by Law No. 28389, published on November 17th, 2004.*

Article 12

Social security funds and reserves are intangible. Resources are applied in the manner and under the responsibilities set forth by law.

Article 13

The aim of education is the comprehensive development of the human being. The State recognizes and guarantees freedom of education. Parents have the duty to educate their children and the right to choose their schools and participate in the educational process.

Article 14

Education promotes knowledge, learning, and the practice of the humanities, science, technology, the arts, physical education, and sports. It prepares individuals for life and work and encourages solidarity.

The State promotes the scientific and technological development of the country.

Ethical and civic training and the teaching of the Constitution and human rights are mandatory in all civil and military educational processes. Religious education is provided in keeping with freedom of conscience.

Education is provided, at all levels, in conformity with constitutional principles and the purposes of the relevant educational institution.

Communication media shall cooperate with the State in education and in moral and cultural formation. 10

Article 15

The teaching profession in public schools is a public service career. The law sets forth the requirements for serving as a principal or a teacher in a school, as well as his rights and obligations. The State and the society ensure their continuing evaluation, training, professionalization, and promotion.

The student is entitled to a type of education that respects his identity, as well as to proper psychological and physical treatment.

Any person or corporate entity has the right to promote and operate educational institutions, and to transfer the ownership of such institutions, in accordance with the law.

Article 16

Both the educational system and its governing regulations are decentralized.

The State coordinates the educational policy. It formulates the general guidelines of school curricula, as well as the minimum requirements for the organization of educational centers. It oversees their compliance and the quality of education.

The State ensures that no one is prevented from receiving appropriate education on grounds of economic status, or mental or physical disabilities.

Education enjoys priority in the allocation of ordinary resources in the Budget of the Republic.

Article 17

Early childhood, primary, and secondary education are compulsory. In public schools, education is free. In public universities, the State guarantees the right to free education to those students who maintain a satisfactory performance, and lack the economic resources needed to cover the cost of education.

In order to ensure the greatest number of educational offerings and to help those who cannot afford their own education, the law sets forth the method of subsidizing private education in any of its forms, including communal and cooperative education.

The State promotes the establishment of schools, wherever people may require them.

The State guarantees the eradication of illiteracy. It also encourages bilingual and intercultural education, in accordance with the particular characteristics of each area. It preserves the diverse cultural and linguistic manifestations throughout the country. It promotes national integration. 11

Article 18

The aim of university education is to support vocational training, the dissemination of culture, intellectual and artistic creativity, and scientific and technological research. The State guarantees academic freedom and rejects intellectual intolerance.

Universities are supported by public and private entities. The law sets the conditions for the authorization of their operation.

The university is a community consisting of faculty members, students, and alumni. Trustees of the university also participate in the community, in accordance with the law.

Every university is autonomous in its regulations, governance, and academic, administrative and financial regimes. Universities are governed by their own statutes within the framework of the Constitution and the law.

Article 19

Universities, colleges, and all other educational institutions established in accordance with the law enjoy exemption from all direct and indirect taxes levied on assets, activities, and services concerning their educational and cultural purposes. On the subject of import tariffs, a special arrangement for allocation of taxes may be established for specific assets.

Scholarships and grants for educational purposes shall be exempt from taxes and enjoy tax benefits in the manner and within the limits prescribed by law.

The law sets forth the tax provisions that will govern the above-mentioned institutions, as well as the requirements and conditions to be met by cultural centers that, by way of exception, may enjoy the same benefits.

For private educational institutions that generate revenues legally defined as profits, the income tax may be applied.

Article 20

Professional associations are autonomous institutions recognized by public law. The law determines those cases where membership in an association is mandatory.

Article 21

Archeological sites and remains, constructions, monuments, places, bibliographical documents and archival materials, art objects, and tokens of historical value, expressly declared cultural assets and those provisionally presumed to be so, are the cultural heritage of the Nation, irrespective of whether they are private or public property. They are protected by the State.

The law guarantees ownership of such cultural heritage. 12 In accordance with the law, private participation is encouraged in the preservation, restoration, exhibition, and dissemination of such objects, as well as their return to the country when illegally taken abroad.

Article 22

Work is a right and a duty. It is the foundation for social welfare and a means of self-realization.

Article 23

Work, in its diverse forms, is a matter of priority concern for the State, which provides special protection for working mothers, minors, and persons with disabilities.

The State promotes conditions for social and economic progress, in particular through policies aimed at encouraging productive employment and work education.

No working relation can limit the exercise of constitutional rights, nor disavow or disrespect the dignity of workers.

No one is obliged to work without pay or without his free consent.

Article 24

The worker is entitled to adequate and fair compensation that ensures both himself and his family material and spiritual well-being.

Payment of wages and social benefits for the worker takes priority over any other obligation of the employer.

Minimum wages are regulated by the State with participation of representative organizations of workers and employers.

Article 25

The normal workday is eight hours, or the normal workweek is forty-eight hours, at the longest. In the case of cumulative or atypical workdays, the average number of work hours during an equivalent period may not exceed that maximum.

Workers have the right to weekly and annual paid vacations. This benefit and compensation are regulated by law or agreement.

Article 26

The following principles must be respected in labor relationships:

1. Equal opportunity without discrimination.
2. Inalienability of the rights recognized by the Constitution and the law.
3. Interpretation in favor of the worker in cases of insurmountable doubt on the meaning of a regulation.

Article 27

The law grants the worker suitable protection against unfair dismissal.

Article 28

The State recognizes the right of workers to join trade unions, to engage in collective bargaining, and to strike. It ensures their democratic exercise by:

1. Guaranteeing freedom to form trade unions.
2. Encouraging collective bargaining and promoting peaceful settlement to labor disputes. Collective agreements are binding in the matters concerning their terms.
3. Regulating the right to strike so that it is exercised in harmony with the social interest. It defines exceptions and limitations.

Article 29

The State recognizes the right of workers to share in enterprise profits and promotes other forms of participation.

CHAPTER III POLITICAL RIGHTS AND DUTIES

Article 30

All Peruvians above the age of eighteen are citizens. To exercise citizenship, they must be registered to vote.

Article 31

Citizens are entitled to take part in public affairs by means of referendum, legislative initiative, removal or revocation of authorities, and demands for accountability. They also have the right to be elected and to freely elect their representatives in accordance with the provisions and procedures set forth by the organic act.

It is a right and a duty of residents to participate in the municipal government of their jurisdiction. The law governs and promotes direct and indirect mechanisms of this participation.

Every citizen has the right to vote in the enjoyment of his civil capacity. To exercise this right, he is required to be properly registered.

Voting is personal, equal, free, secret, and compulsory up to the age of seventy years and optional after this age.

The law establishes the mechanisms to guarantee the neutrality of the State during elections and citizen participation processes.

Any act that prohibits or abridges the exercise of citizen rights shall be null and punishable*

*** Article amended by Law No. 28480, published on March 30th, 2005. Before the amendment, this article stated:**

Citizens are entitled to take part in public affairs by means of referendum, legislative initiative, removal or revocation of authorities, and demands for accountability. They also have the right to be elected and to freely elect their representatives in accordance with the provisions and procedures set forth by the organic act.

It is a right and a duty of residents to participate in the municipal government of their jurisdiction. The law governs and promotes the direct and indirect mechanisms of this participation.

Every citizen has the right to vote in the enjoyment of his civil capacity.

Voting is personal, equal, free, secret, and compulsory up to the age of seventy years and optional after this age.

Any act that prohibits or abridges the exercise of the rights of the citizen shall be null and punishable.

Article 32

A referendum may be held on the following:

1. Partial or complete amendment of the Constitution.
2. Approval of binding rules.
3. Municipal ordinances.

4. Matters regarding the decentralization process.

Abolition or abridgement of the fundamental rights of the person may not be submitted to a referendum, neither may tax and budget rules nor international treaties in force.

Article 33

Exercise of citizenship may be suspended by:

1. Judicial interdiction.
2. Sentence of imprisonment.
3. Sentence of disqualification from political rights.

Article 34

Members of the Armed Forces and the National Police are entitled to vote and to citizen participation as governed by law. They may not be elected, participate in political activities or demonstrations, or engage in acts of proselytism while they are on active duty, in accordance with the law. □

□ **Article amended by Law No. 28480, published on March 30th, 2005. Before the amendment, this article stated:**

Members of the Armed Forces and the National Police on duty may not elect or be elected. Any other disqualification does not exist, nor may it be established.

Article 35

Citizens may exercise their rights individually or through political organizations, such as political parties, movements, or alliances, in accordance with the law. Such organizations contribute to the development and expression of the will of the people. Their entry in the proper register confers legal personhood upon such entities.

The law sets forth the rules aiming to ensure the proper democratic operation of political parties, transparency concerning the origin of their financial resources, and free access to the State-owned social media proportional to the last general election results.

Article 36

The State recognizes political asylum. It accepts the status of the asylee determined by the State granting asylum. In cases of expulsion, the asylee shall not be returned to the country whose government persecutes him.

Article 37

The Executive Branch is the sole competent authority for granting extradition following an opinion by the Supreme Court, in accordance with the law and treaties, and in compliance with the principle of reciprocity.

Extradition shall not be granted when it is determined that the request was motivated by persecution or punishment on grounds of religion, nationality, opinion, or race.

Those persecuted for political offenses or related acts are excluded from extradition. Genocide, assassination of a political figure, or crimes of terrorism are not considered as such.

Article 38

All Peruvians have the duty to honor Peru and to protect national interests, as well as to respect, obey, and defend the Constitution and the code of laws of the Nation.

CHAPTER IV PUBLIC SERVICE

Article 39

All public officials and civil servants are in the service of the Nation. The President of the Republic is the highest official in the service of the Nation, followed by, in this order of importance: Congressmen, members of the Cabinet, members of the Constitutional Court and the Council of the Magistracy, Justices of the Supreme Court, the Prosecutor General of the Nation and the Ombudsman, in the same category, and the representatives of the decentralized agencies and Mayors, in accordance with the law.

Article 40

The law regulates the entry into the civil service, as well as the rights, duties, and responsibilities of public servants. Officials holding political posts and posts of trust are not included in the civil service. No official or civil servant may hold more than one remunerated office, with the exception of an additional teaching position.

Workers employed in state-owned enterprises or public and private joint-ventures are not included in the civil service.

Incomes received for any purpose by senior officials and other civil servants, as the law prescribes by virtue of their posts, must be published periodically in the official gazette.

Article 41

Officials and public servants whom the law specifies or who manage or handle State funds or funds of bodies financially supported by the State shall make a statement of property owned and of income upon assuming, holding, and leaving office. The corresponding publication is to be made in the official gazette under the terms and conditions prescribed by the law.

When there is presumption of illicit enrichment, the Prosecutor General shall, by complaint from third parties or by virtue of his office, bring charges before the court.

The law sets forth the responsibilities of officials and civil servants, as well as the duration of their ineligibility for public office.

The length of the statute of limitations is doubled for crimes against State assets.

Article 42

The rights of civil servants to unionize and strike are acknowledged by law. State officials with decision-making powers, those in posts of trust or of management, as well as members of the Armed Forces and the National Police are not included herein. 17

**TITLE II
THE STATE AND THE NATION****CHAPTER I
THE STATE, THE NATION, AND THE TERRITORY****Article 43**

The Republic of Peru is democratic, social, independent, and sovereign.
The State is one and indivisible.

Its form of government is unitary, representative, and decentralized. It is organized pursuant to the principle of separation of powers.

Article 44

The fundamental duties of the State are to defend the national sovereignty, to guarantee full enjoyment of human rights, to protect the population from threats to their security, and to promote general welfare based on justice and the comprehensive and balanced development of the Nation.

It is also the duty of the State to establish and implement the border policy and to promote integration, in particular of Latin America, as well as the development and cohesiveness of border zones, in accordance with the foreign policy.

Article 45

The power of the State emanates from the people. Those who exercise it do so within the limitations and under the responsibilities set forth by the Constitution and the law.

No individual, organization, branch of the Armed Forces, National Police force, or group of people may arrogate to themselves the exercise of such power. To do so constitutes rebellion or sedition.

Article 46

No one owes obedience to a usurper government or to anyone who assumes public office in violation of the Constitution and the law.

The civil population has the right to insurrection in defense of the constitutional order.
Acts of those who usurp public office are null and void.

Article 47

The defense of State interests is the responsibility of the State Attorneys in accordance with the law. The State is exempted from payment of judicial costs and expenses.

Article 48

The official languages of the State are Spanish and, wherever they predominate, Quechua, Aymara, and other native tongues, in accordance with the law.

Article 49

The capital of the Republic of Peru is the city of Lima. Its historical capital is the city of Cusco.

The symbols of the Nation are the flag with three vertical stripes in red, white, and red; the coat of arms, and the national hymn, as established by law.

Article 50

Within an independent and autonomous system, the State recognizes the Catholic Church as an important element in the historical, cultural, and moral formation of Peru, and lends the church its cooperation.

The State respects other denominations and may establish forms of collaboration with them.

Article 51

The Constitution prevails over any other legal rule, the laws over lower level provisions, and so on successively. Publication is essential to the enforcement of any legal rule of the State.

Article 52

All those born within the territory of the Republic are Peruvians by birth, as well as those born abroad of a Peruvian father or mother and duly registered while still minors.

Those who acquire the nationality by naturalization or choice are also Peruvians, as long as they maintain residency in Peru.

Article 53

Ways of acquisition or recovery of nationality are determined by law.

Peruvian nationality cannot be lost, unless by express renunciation before a competent Peruvian authority.

Article 54

The territory of the Republic is inalienable and inviolable. It includes the soil, the subsoil, the maritime dominion, and the superjacent airspace.

The maritime dominion of the State includes the sea adjacent to its coasts, as well as the seabed and subsoil thereof, extending out to a distance of 200 nautical miles measured from the baselines established by law.

In its maritime dominion, the State exercises sovereignty and jurisdiction, without prejudice to the freedoms of international communication, in accordance with the law and treaties ratified by the State.

The State exercises sovereignty and jurisdiction over the airspace of its territory and its adjacent sea up to the limit of 200 miles, without prejudice to the freedoms of international communication, in conformity with the law and treaties ratified by the State.

CHAPTER II TREATIES

Article 55

Treaties formalized by the State and in force are part of national law.

Article 56

Treaties must be approved by the Congress before their ratification by the President of the Republic, provided that they concern the following matters:

1. Human rights.
2. Sovereignty, dominion, or integrity of the State.
3. National defense.

4. Financial obligations of the State.

Treaties that create, modify, or eliminate taxes that require modification or repeal of any law, or that require legislative measures for their application, must also be approved by the Congress.

Article 57

The President of the Republic may formalize or ratify treaties or accede to them without previous approval by the Congress in matters not contemplated in the preceding article. In all such cases, the President must notify the Congress.

When a treaty affects constitutional provisions, it must be approved by the same procedure established to reform the Constitution prior to its ratification by the President of the Republic.

Denunciation of treaties is within the power of the President of the Republic, who has the duty to notify the Congress. In the case of treaties subject to approval by Congress, such denunciation requires its previous approval.

TITLE III THE ECONOMIC SYSTEM

CHAPTER I GENERAL PRINCIPLES

Article 58

Private initiative is free. It is exercised within a social market economy. Under this system, the State guides the development of the country and it is principally active in promoting employment, health, education, security, public services, and infrastructure.

Article 59

The State promotes the creation of wealth and guarantees the freedom to work, as well as free enterprise, trade, and industry. The exercise of these freedoms must not be harmful to the public morals, health, or safety. The State provides opportunities to those sectors suffering from unequal opportunity for advancement. In this spirit, it promotes small businesses of all types.

Article 60

The State recognizes economic pluralism. The national economy is sustained in the coexistence of diverse forms of ownership and enterprise.

Authorized solely by express law, the State may subsidiarily engage in business activities, directly or indirectly, for reasons of high public interest or manifest national convenience. Business activity receives the same legal treatment, whether public or private.

Article 61

The State facilitates and oversees free competition. It fights any practice that would limit it and the abuse of dominant or monopolistic positions. No law or arrangement may authorize or establish monopolies.

The press, radio, television, and other means of expression and social communication and, in general, enterprises, goods and services related to freedom of speech and communication, cannot be objects of exclusivity, monopoly, or hoarding, directly or indirectly, by the State or private parties. 21

Article 62

The freedom of contract guarantees that parties may validly negotiate, according to the rules in effect at the time of the contract. Contractual terms may not be modified by laws or any other provision whatsoever. Conflicts deriving from contractual relations may be resolved solely through arbitration or judicial recourse, in accordance with the protective mechanisms provided for in the contract, or established by law.

By means of contract law, the State may provide guarantees and grant security. These may not be modified legislatively, without prejudice to the protection provided in the preceding paragraph.

Article 63

National and foreign investments are subject to the same conditions. The production of goods, services, and foreign exchange are free. If another country or other countries adopt protectionist or discriminatory measures that are detrimental to the national interest, the State may, in defense of it, adopt similar measures.

All contracts of the State and public corporations with resident foreign nationals are subject to the national laws and courts of competent jurisdiction, and surrender to any diplomatic claim.

Contracts of a financial nature may be exempted from national jurisdiction.

The State and other public corporations may submit controversies arising from their contractual relations to courts specially established by virtue of treaties in effect. They may also submit them to national or international arbitration in the manner provided by law.

Article 64

The State guarantees the free possession and disposition of foreign currency.

Article 65

The State defends the interests of consumers and clients. For this purpose, it guarantees the right to information on goods and services available to them on the market. Likewise, it especially watches over the health and security of the population.

CHAPTER II THE ENVIRONMENT AND THE NATIONAL RESOURCES

Article 66

Natural resources, renewable and non renewable, are patrimony of the Nation. The State is sovereign in their utilization.

An organic law fixes the conditions of their use and grants them to private individuals. Such a concession grants the title holders a real right subject to those legal regulations.

Article 67

The State determines the national environmental policy. It also promotes the sustainable use of its natural resources.

Article 68

The State is obliged to promote the conservation of biological diversity, and protected natural areas.

Article 69

The State promotes the sustainable development of the Amazonia by means of appropriate legislation.

CHAPTER III PROPERTY

Article 70

The right to property is inviolable. The State guarantees it. It is exercised in harmony with the common good, and within the limits of the law. No one shall be deprived of his property, except, exclusively, on grounds of national security or public need determined by law, and upon cash payment of the appraised value, which must include compensation for potential damages. Proceedings may be instituted before the Judiciary to challenge the property value established by the State in the expropriatory procedure.

Article 71

With respect to property, foreign nationals, whether they are persons or corporate entities, fall under the same conditions as Peruvians. Therefore, they may in no instance invoke exception or diplomatic protection.

However, within a distance of fifty kilometers from the borders, foreigners may not acquire or possess under any title, directly or indirectly, mines, lands, woods, water, fuel, or energy sources, whether individually or in partnership, under penalty of losing that so acquired right to the State. The sole exception involves cases of public need expressly determined by executive decree and approved by the Cabinet, in accordance with the law.

Article 72

The law may temporarily, solely on grounds of national security, set forth specific restrictions and bans on acquisition, possession, exploitation, and transfer of certain types of property.

Article 73

Public property is inalienable and may not be prescribed. Property available for public use may be granted to private parties, in accordance with the law, for its economic development.

CHAPTER IV TAX AND BUDGET REGIME

Article 74

Taxes are created, modified, or abolished. Exemptions are granted exclusively by law or by legislative decree in case of delegation of powers, except for tariffs and rates, which are regulated by an executive decree.

Regional and local governments may create, modify, and eliminate taxes and rates, or exempt the same within their jurisdiction and within the limits defined by law. In exercising its taxing power, the State shall respect the principle of the legal reservation and those principles concerning equality and respect for basic rights of the person. No tax shall have a confiscatory nature.

Budget Acts and emergency decrees shall not contain provisions on taxes. Laws concerning annual taxes come into force on the first day of January of the year following their enactment. Tax provisions set forth in violation of this article are null and void.*

*** Article amended by Law No. 28390, published on November 17th, 2004. Before the amendment, this article stated:**

Taxes are set up, modified, or abolished. Exemptions are granted exclusively by law or by legislative decree in case of delegation of powers, except for tariffs and rates, which are regulated by executive decree.

Local governments may set up, modify, and eliminate taxes and rates, or exempt the same within their jurisdiction and within the limits defined by law. In exercising its taxing power, the State shall respect the principle of the legal reservation and those principles concerning equality and respect for basic rights of the person. No tax shall have a confiscatory nature. Emergency decrees shall not contain provisions on taxes. Laws concerning annual taxes come into force on the first day of January of the year following their enactment. Budget Acts shall not contain provisions on taxes.

Tax provisions set forth in violation of this article are null and void.

Article 75

The State guarantees payment of public debt only when contracted by constitutional governments, in accordance with the Constitution and the law.

The domestic and foreign debt operations of the State are approved in accordance with the law.

Municipalities may undertake credit transactions charged against their own resources and assets without requiring legal authorization.

Article 76

Public works and acquisition of supplies with public funds or resources are compulsorily based on contracts and public bidding, as are the acquisition and sale of assets.

The contracting of services and projects, whose importance and amount are determined by the Budget Act is done by public bidding. The law sets forth the procedures, exceptions and respective responsibilities.

Article 77

The economic and financial administration of the State is governed by the budget passed annually by Congress. The budget structure of the public sector consists of two parts: the central government and decentralized agencies.

The budget allocates public resources fairly. Its programming and implementation depend on efficiency criteria that concern basic social necessities and decentralization. In accordance with the law, every circumscription shall receive an adequate share of the total income and revenue collected by the State for the utilization of natural resources in each zone as a natural resource royalty (*canon*). *

*** Article amended by Law No. 26472, published on June 13th, 1995. Before the amendment, this article stated:**

The economic and financial administration of the State is governed by the budget passed annually by Congress.

The budget structure of the public sector consists of two parts: the central government and decentralized agencies.

The budget allocates public resources fairly. Its programming and implementation depend on efficiency criteria that concern basic social necessities and decentralization.

*In accordance with the law, every circumscription shall receive an adequate share of the tax income collected for the utilization of natural resources in each zone as a natural resource royalty (*canon*).*

Article 78

The President of the Republic sends the Budget bill to the Congress each year with a deadline expiring on August 30th.

On the same date, he also sends the national debt and financial stability bills.

The Budget bill shall be effectively balanced.

Loans from the Central Reserve Bank of Peru or the Bank of the Nation are not considered fiscal revenue.

Loans shall not cover current expenditure. The Budget shall not be passed without an appropriation for the servicing of public debt.

Article 79

Members of Congress have no initiative for creating or increasing public spending, except on matters of their budget.

The Congress may not pass taxes for predetermined purposes, except upon request of the Executive Branch.

In any other case, tax laws concerning benefits or exemptions require a previous report of the Ministry of Economy and Finance.

Only by express law, passed by two-thirds of congressmen, may a special tax treatment for a specific zone of the country be selectively and temporarily extended.

Article 80

The Minister of Economy and Finance sustains the income statement before the Plenary Assembly of Congress. Each minister maintains the expenditure statement of his own sector; prior to that, they shall sustain the outcomes and goals of the previous year budget execution, and the budget implementation progress of the current fiscal year.

Likewise, the Chief Justice of the Supreme Court, the Prosecutor General of the Nation, and the President of the National Election Board sustain the statements of their own institutions.

If the enrolled Budget bill is not referred to the Executive Branch by November 30th, the Executive original draft bill comes into effect and is enacted by legislative decree.

The supplemental credits, additional expenditure and transfers of items are handled before Congress in the same manner as the Budget Act. During the congressional recess, they are handled in the Permanent Assembly. To pass, the votes of three-fifths of the legal number of its members are required.

Article 81

The General Account of the Republic, accompanied by the audit report of the Office of the Comptroller General, is submitted by the President of the Republic to the Congress by August 15th of the year following the implementation of the budget.

The General Account is examined and reported upon by a review committee by October 15th. Congress shall vote on its passage at the latest on October 30th. If the Congress fails to vote within this period, the review committee shall submit its opinion to the Executive Branch so that it may enact a legislative decree that includes the General Account. □

□ **Article amended by Law No. 29401, published on September 8th, 2009. Before the amendment, this article stated:**

The General Account of the Republic, accompanied by the audit report of the Office of the Comptroller General, is submitted by the President of the Republic to Congress by November 15th of the year following the implementation of the budget.

The General Account is examined and reported upon by a review committee within the ninety days following its submission. Congress shall vote on its passage within thirty days. If Congress fails to vote within this period, the review committee submits its opinion to the Executive branch so that it may enact a legislative decree that includes the General Account.

Article 82

The Office of the Comptroller General is a decentralized body of public law that enjoys autonomy in accordance with its organic act. It is the highest body of the National Control System. It is responsible for overseeing the respective legalities of the implementation of the national Budget, public debt operations, and activities of institutions subject to its control.

The Congress appoints the Comptroller General for seven years upon recommendation from the Executive Branch. He may be removed by Congress for gross misconduct.

CHAPTER V CURRENCY AND BANKING

Article 83

The law determines the monetary system of the Republic. Issuance of bills and coins is under the exclusive power of the State. Such power is exercised through the Central Reserve Bank of Peru.

Article 84

The Central Bank is a corporate entity under public law. It is autonomous in conformity with its organic act.

Its aim is to preserve monetary stability. Its functions are: to regulate the currency and credit of the financial system, to manage the international reserve under its responsibility, and to perform other functions as provided in its organic act.

The Bank accurately and periodically informs the country about the state of the national finances under the responsibility of its Board of Directors.

The Bank may not grant financing to public funds, except for the purchase on the secondary market of securities issued by the Treasury within the limits set forth by its organic act.

Article 85

The Bank may conduct credit operations and formalize agreements, in order to cover temporary imbalances in its international reserves.

A legal authorization is required, when the amount of such operations or agreements exceeds the limit as set forth in the Budget of the public sector, which must be reported to Congress.

Article 86

The Bank is managed by a board of directors consisting of seven members. The Executive Branch shall appoint four members, including the President, who must be ratified by the Congress. Likewise, Congress votes the other three members through an absolute majority of the legal number of its members.

All directors of the Bank are appointed for the same constitutional term as the President of the Republic. They do not represent any particular entity or interest. Congress may remove them

for gross misconduct. In the event of such removal, the new directors hold office for the remaining constitutional term.

Article 87

The State encourages and guarantees savings. The law establishes the obligations and limits of enterprises that collect savings from the public, as well as the mode and extent of such guarantees.

The Superintendence of Banking, Insurance, and Private Pension Fund Management Firms is responsible for control over banking, insurance, and private pension fund management firms, other companies collecting deposits from the public, and those that conduct related and similar operations, as set forth in law.

The law establishes the organization and functional autonomy of the Superintendence of Banking, Insurance, and Private Pension Fund Management Firms.

The Executive Branch appoints the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms for the period corresponding to its constitutional term of office. The Congress ratifies him.*

*** Article amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this article stated:**

The State encourages and guarantees savings. The law provides for the obligations and limits of enterprises that collect savings from the public, as well as the mode and extent of such guarantees.

The Superintendence of Banking and Insurance is responsible for control over banking and insurance firms, other companies collecting deposits from the public, and those that conduct related and similar operations, as set forth in law.

The law establishes the organization and functional autonomy of the Superintendence of Banking and Insurance.

The Executive Branch appoints the Superintendent of Banking and Insurance for the period corresponding to his constitutional term of office. Congress ratifies him.

CHAPTER VI THE AGRICULTURAL REGIME AND RURAL AND NATIVE COMMUNITIES

Article 88

The State preferentially supports agricultural development and guarantees the right to ownership of the land, whether private, communal, or in any other form of partnership. The law may define boundaries and land area based on the features of each zone.

According to legal provision, abandoned land reverts to State ownership, to be placed on the market.

Article 89

The rural and native communities have legal existence and are corporate entities. They are autonomous in their organization, community work, and the use and free disposal of their lands, as well as in the economic and administrative aspects within the framework provided by law. The ownership of their lands may not prescribe, except in the case of abandonment described in the preceding article.

The State respects the cultural identity of the rural and native communities.

**TITLE IV
THE STRUCTURE OF THE STATE**

**CHAPTER I
THE LEGISLATIVE BRANCH**

Article 90

The Legislative Branch shall be vested in Congress, which has a single chamber.

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here are 130 congressmen, elected for terms of five years through an election process organized in accordance with the law. Candidates for the presidency may not be among the lists of congressional candidates. Candidates for vice presidencies may simultaneously be congressional candidates.

To be elected congressman, one must be Peruvian by birth, have attained the age of twenty-five years, and enjoy the right to vote.□

□ **Article amended by Law No. 29402, published on September 8th, 2009. Before the amendment, this article stated:**

The Legislative Branch shall be vested in Congress, which has a single chamber.

There are 120 congressmen, elected for terms of five years through an election process organized in accordance with the law. Candidates for the presidency may not be among the lists of congressional candidates. Candidates for vice presidencies may simultaneously be congressional candidates.

To be elected congressman, one must be Peruvian by birth, have attained the age of twenty-five years, and enjoy the right to vote.

* **Article amended by Law No. 28607, published on October 4th, 2005. Before the amendment, this article stated:**

The following persons may not be elected congressmen if they have not left office six months before the election:

1. *Ministers and Deputy Ministers, the Comptroller General, and regional authorities.*
2. *Members of the Constitutional Court, the National Council of the Magistracy, the Judicial branch, the Office of the Prosecutor General, the National Election Board, and the Ombudsman.*
3. *The President of the Central Reserve Bank, the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms, and the National Superintendent of Tax Administration*

Note: Following transitory provisions are included in Law No. 29402, published on September 8th, 2009:

SPECIAL TRANSITORY PROVISION

Third. The National Election Board allocates four seats for the provinces of Lima, without affecting the existing national apportionment and the other six, in accordance with the law.

TRANSITORY PROVISION

Single. This constitutional reform shall come into effect as of the 2011 electoral process.

Article 91

The following persons may not be elected members of the national parliament if they have not resigned their offices six (6) months before the election:

1. Ministers and Deputy Ministers, and the Comptroller General.
2. Members of the Constitutional Court, the National Council of the Magistracy, the Judicial Branch, the Office of the Prosecutor General, the National Election Board, and the Ombudsman.
3. The President of the Central Reserve Bank, the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms, and the National Superintendent of Tax Administration.
4. Members of the Armed Forces and the National Police on active duty.
5. Other individuals as provided in the Constitution. *

*** Subparagraph amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this subparagraph stated:**

The President of the Central Reserve Bank, the Superintendent of Banking and Insurance, the Superintendent of Tax Administration, Superintendent of National Customs, and the Superintendent of Private Pension Fund Management.

4. *Members of the Armed Forces and the National Police on active duty.*

*** Last paragraph of article 92 amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this paragraph stated:**

The office of congressman is incompatible with similar positions in enterprises that receive concessions from the State during the term of office for the congressman, as well as in enterprises of the financial credit system supervised by the Superintendence of Banking and Insurance.

Article 92

The office of congressman is a full-time job. Therefore, members are prohibited from holding any other office, profession, or occupation during the time in which Congress operates. The term of office for congressman is incompatible with any other public office, except that of minister and, with prior authorization of Congress, the participation in select committees on international affairs.

The office of congressman is likewise incompatible with positions such as manager, proxy, representative, trustee, attorney, majority shareholder, or member of the board of directors of enterprises that have work, supply, or provision contracts with the State or that manage public revenues or render public services.

The office of congressman is incompatible with similar positions in enterprises that receive concessions from the State during the term of office of the congressman, as well as in enterprises of the financial credit system supervised by the Superintendence of Banking, Insurance, and Private Pension Fund Management Firms.*

Article 93

Congressmen represent the Nation. They are not subject to any binding mandate or interpellation.

They are not responsible to any authority or jurisdictional body for votes cast or opinions expressed in the exercise of their functions.

Congressmen may not be tried or arrested without prior authorization from Congress or the Permanent Assembly, from the time of their election to a month after terminating their office, except in cases of *in flagrante delicto*, whereupon they are placed at the disposal of Congress or its Permanent Assembly within twenty-four hours to determine whether their imprisonment and prosecution may be authorized or not.

Article 94

Congress drafts and passes its own Standing Rules, which have the force of law. It also elects members to serve on the Permanent Assembly and committees, defines the organization and functions of parliamentary groups, manages its finances, approves its budget, appoints and removes its officers and employees, and grants them benefits in accordance with the law.

Article 95

The legislative mandate is non renounceable.

The disciplinary penalties imposed by Congress on its members, when involve suspension from their duties, may not exceed 120 days of the legislative session.

Article 96

Any member of Congress may ask Ministers, the National Election Board, the Comptroller General, the Central Reserve Bank, the Superintendence of Banking, Insurance, and Private Public Fund Management Firms, the regional and local governments, and other institutions as provided by law for any information as he deems necessary.□□

□□ ***First paragraph of article 96 amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this paragraph stated:***

Any member of Congress may ask Ministers, the National Election Board, the Comptroller General, the Central Reserve Bank, the Superintendence of Banking and Insurance, the local governments, and other institutions as provided by law for any information as he deems necessary.

The request must be made in writing and be in conformity with the Standing Rules of Congress. Failure to respond results in legal liability.

Article 97

Congress may initiate investigations on any matter of public interest. Upon request, appearances before the committees responsible for such investigations are compulsory, under the same requirements as judicial proceedings.

In order to accomplish their purposes, such committees may have access to any information, which may entail lifting bank secrecy and the confidentiality of tax filings; except for information affecting personal privacy. The conclusions of the committees are not binding to jurisdictional bodies.

Article 98

The President of the Republic is obliged to place at the disposal of the Congress those members of the Armed Forces and the National Police requested by the President of Congress.

The Armed Forces and the National Police shall not enter the premises of Congress without authorization from its President.

Article 99

It is the duty of the Permanent Assembly to accuse before Congress: the President of the Republic, members of Congress, Ministers, members of the Constitutional Court, members of the National Council of the Magistracy, the Justices of the Supreme Court, Supreme

Prosecutors, the Ombudsman, and the Comptroller General, for any violation of the Constitution or any crime committed during the performance of their duties and for up to five years after they have left office.

Article 100

It is the duty of the Congress, without participation of the Permanent Assembly, to decide whether or not to suspend an accused official or declare him ineligible for public service for up to ten years, or to remove him from office without prejudice to any other responsibility.

During these proceedings, the accused official has the right to defend himself or to be assisted by counsel before the Permanent Assembly and Congress as a whole.

In cases of a criminal indictment, the Prosecutor General files criminal charges with the Supreme Court within five days. The Justice of the Supreme Court responsible for criminal affairs then initiates the criminal proceedings.

Acquittal by the Supreme Court restores political rights to the accused official.

The terms of the prosecutorial accusation and the order to start proceedings may not go beyond or below the terms of the Congress charges.

Article 101

Congress shall elect the members of the Permanent Assembly. The membership shall be proportional to that of the representatives in each parliamentary group and shall not exceed twenty-five percent of the total number of congressmen.

It is the duty of the Permanent Assembly:

1. To appoint the Comptroller General upon recommendation from the President of the Republic.
2. To ratify the appointments of the President of the Central Reserve Bank and the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms.*

*** Subparagraph amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this subparagraph stated:**

2. *To ratify the appointments of the President of the Central Reserve Bank and the Superintendent of Banking and Insurance.*
 3. To approve the supplemental credits, budget transfers, and supplemental allotments during the parliamentary recess.
 4. To exercise the delegation of legislative powers conferred by Congress.
- Matters relating to constitutional reform, approval of international treaties, organic acts, the Budget Act, and the General Account of the Republic Act may not be delegated to the Permanent Assembly.
5. To perform other responsibilities as set forth in the Constitution and the Standing Rules of Congress.

Article 102

It is the duty of the Congress:

1. To pass laws and legislative resolutions, as well as to interpret, amend, or repeal existing laws.

2. To ensure respect for the Constitution and the laws; and to do whatever is necessary to hold violators responsible.
3. To conclude treaties, in accordance with the Constitution.
4. To pass the Budget and the General Account.
5. To authorize loans, in accordance with the Constitution.
6. To exercise the right to amnesty.
7. To approve the territorial demarcation proposed by the Executive Branch.
8. To consent to the entry of foreign troops into the territory, whenever it does not affect, in any manner, national sovereignty.
9. To authorize the President of the Republic to leave the country.
10. To perform any other duties as provided in the Constitution and those inherent in the legislative function.

CHAPTER II THE LEGISLATIVE FUNCTION

Article 103

Special laws may be passed because they are required by the nature of things, but not because of differences between persons. After its entry into force, the law is applied to the consequences of existing legal relations and situations, and it does not have retroactive force or effect, except, in both cases, in criminal matters when such application favors the defendant. A law is repealed only by another law. A law is null by declaration of unconstitutionality.

The Constitution does not endorse the abuse-of-rights doctrine.*

*** Article replaced by Law No. 28389, published on November 17th, 2004. Before the amendment, this article stated:**

Special laws may be passed because they are required by the nature of things, but not because of differences between persons.

No law has retroactive force or effect, except in criminal matters when such application favors the defendant.

A law is repealed only by another law. A law is null by declaration of unconstitutionality. The Constitution does not endorse the abuse-of-rights doctrine.

Article 104

Congress may delegate the power to legislate to the Executive Branch through legislative decrees on specific matters and in the term established by the authorizing law.

Congress may not delegate those non delegable matters to the Permanent Assembly.

As to their promulgation, publication, enforcement, and effects, legislative decrees are subject to the same rules governing the law.

The President of the Republic reports to the Congress or the Permanent Assembly on each legislative decree.

Article 105

No bill shall be passed without previous approval of the competent ruling committee, except as provided in the Standing Rules of Congress. Bills sent by the Executive Branch of an urgent nature shall have priority in Congress.

Article 106

Organic acts govern the structure and operation of State bodies as defined in the Constitution, as well as other matters whose regulation by such acts is established in the Constitution. Bills of organic acts are processed like any other law. In order to pass or amend them, the vote of more than half of the legal number of members of Congress is required.

CHAPTER III LAWMAKING AND ENACTMENT

Article 107

Both the President of the Republic and the congressmen have the right to initiative in lawmaking.

The same right, in matters within their competence, is also enjoyed by the other State branches, autonomous public agencies, regional and local governments, and professional associations. Likewise, citizens possess the right to initiative in accordance with the law.*

** Article amended by Law No. 28390, published on November 17th, 2004. Before the amendment, this article stated:*

Both the President of the Republic and the congressmen have the right to initiative in lawmaking.

The same right, in matters within their competencies, is also enjoyed by the other State branches, autonomous public agencies, municipalities, and professional associations. Likewise, citizens possess the right to initiative in accordance with the law.

Article 108

As provided in the Constitution, the passed law is referred to the President of the Republic for enactment within fifteen days. If the President of the Republic fails to enact the law, the President of Congress or the President of the Permanent Assembly is responsible for its enactment, as appropriate.

If the President of the Republic has observations to share regarding the whole or any part of the law passed by the Congress, he shall submit them to the Legislature within fifteen days.

Once the law has been reconsidered by Congress, its President enacts the law with the vote of more than half the legal number of congressmen.

Article 109

The law comes into force the day following its publication in the official gazette, unless a provision of the same law delays its effect in whole or in part.

CHAPTER IV THE EXECUTIVE BRANCH

Article 110

The President of the Republic is the Head of the State and personifies the Nation.

To be elected President of the Republic, one must be Peruvian by birth, have attained the age of thirty-five years at the time of candidacy, and enjoy the right to vote.

Article 111

The President of the Republic is elected by direct suffrage. The candidate who obtains more than half the votes is elected. Invalid or blank votes are not counted.

If no candidate receives an absolute majority, a run-off election is held within thirty days following the proclamation of the official results between the two candidates with the highest relative majorities.

Two Vice Presidents are elected together with the President, in the same manner and under the same requirements and terms.

Article 112

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

*** Article amended by Law No. 27365, published on November 5th, 2000. Before the amendment, this article stated:**

The presidential term of office lasts five years. The President may be reelected immediately for an additional term. A former president may run again following at least one constitutional term, subject to the same conditions.

Article 113

The President of the Republic may vacate his office for the following reasons:

1. Death of the President of the Republic.
2. His permanent physical or moral incapacity declared by Congress.
3. Acceptance of his resignation by Congress.
4. His departure from the national territory without permission from Congress or his failure to return within the agreed time.
5. His removal from office after having been penalized for any of the violations mentioned in article 117 of the Constitution.

Article 114

The office of President of the Republic is suspended in the event of:

1. Temporary incapacity of the President declared by Congress.
2. His subjection to judicial proceedings pursuant to article 117 of the Constitution.

Article 115

In the event of temporary or permanent incapacity of the President of the Republic, the first Vice President shall assume the duties thereof, or, in his absence, the second Vice President, or, in the event of incapacity of both, the President of Congress. Whenever the incapacity is permanent, the President of Congress may immediately call an election.

When the President leaves the national territory, the first Vice President is charged with his office, or, in his absence, the second Vice President.

Article 116

The President of the Republic shall take an oath prescribed by law and assume office before the Congress on July 28th of the year in which the election is held.

Article 117

During his term of office, the President of the Republic may only be charged with: committing high treason; preventing presidential, congressional, regional, or municipal elections; dissolving Congress, except in cases as set forth in article 134 of the Constitution; and preventing the meeting or operation of Congress, the National Election Board, or other bodies of the election system.

Article 118

It is the duty of the President of the Republic:

1. To observe and enforce the Constitution and treaties, laws, and other legal provisions.
2. To represent the State inside and outside of the Republic.
3. To manage the general policy of the government.

4. To ensure the domestic order and external security of the Nation.
5. To call elections for president of the Republic and congressmen, as well as mayors, council members, and other officials, as set forth by law.
6. To convene Congress in special session; and, in that event, to sign the convention decree.
7. To deliver messages to Congress at any time and compulsorily, either in person or in writing, at the commencement of the first regular session. Annual messages shall include detailed reports on the state of the Nation, and improvements and reforms the President deems necessary and relevant for consideration by the Congress. Except in the first instance, the messages of the President are approved by the Cabinet.
8. To exercise the power of regulating laws without violating or distorting them and, within these limits, to issue decrees and resolutions.
9. To observe and enforce the judgments and orders of jurisdictional bodies.
10. To observe and enforce the resolutions of the National Election Board.
11. To manage foreign policy and international affairs, and to formalize and ratify treaties.
12. To appoint ambassadors and plenipotentiaries, upon approval by the Cabinet and with the duty to inform Congress.
13. To welcome foreign diplomatic agents and authorize consuls to perform their duties.
14. To preside over the National Defense System and organize, allot, and order the mobilization of the Armed Forces and National Police.
15. To take the necessary measures to ensure the defense of the Republic, the integrity of the territory, and the sovereignty of the State.
16. To declare war and sign peace treaties with the authorization of Congress.
17. To manage the public treasury.
18. To negotiate loans.
19. To promulgate special measures in economic and financial spheres, through emergency decrees with force of law, as required by the national interest and with the duty to report to Congress. Such emergency decrees may be modified or repealed by Congress.
20. To regulate customs tariffs.
21. To grant pardons and commute sentences, and to exercise the grant of executive clemency to the accused, in cases where the stage of criminal proceedings has exceeded double the term plus extension.
22. To award decorations on behalf of the Nation with the agreement of the Cabinet.
23. To authorize Peruvians to serve in a foreign army.
24. To exercise the other duties of government and administration entrusted to him by the Constitution and law.

CHAPTER V THE CABINET

Article 119

The administration and management of public services are entrusted to the Cabinet and to each minister in the matters of his portfolio.

Article 120

Acts of the President of the Republic without ministerial countersignature are null and void.

Article 121

The collected ministers form the Cabinet. Its organization and duties are stipulated by law. The Cabinet has its own President. The President of the Republic presides over the Cabinet when he convenes it or when he attends its meetings.

Article 122

The President of the Republic appoints and removes the President of the Cabinet from office. He appoints and removes other ministers with the recommendation and consent respectively of the President of the Cabinet.

Article 123

It is the duty of the President of the Cabinet, who may be a minister without portfolio:

1. To be, after the President of the Republic, the authorized spokesperson for the government.
2. To coordinate the duties of the other ministers.
3. To countersign legislative and emergency decrees, and any other decrees or resolutions as stated in the Constitution and the law.

Article 124

To be a minister, one must be Peruvian by birth, exercise his rights to citizenship, and have attained twenty-five years of age. Members of the Armed Forces and the National Police may be ministers.

Article 125

It is the duty of the Cabinet:

1. To approve the bills submitted to Congress by the President of the Republic.
2. To approve legislative and emergency decrees enacted by the President of the Republic, as well as bills, decrees, and resolutions as set forth by law.
3. To deliberate on matters of public interest.
4. To perform other duties as set forth in the Constitution and law.

Article 126

Any agreement of the Cabinet requires the affirmative voting of the majority of its members and it is stated on record.

Ministers shall not hold any other public office, except legislative functions.

Ministers shall neither be a manager of their own interests or those of third parties, engage in profitable activities, nor may they be involved in the administration or management of private enterprises or associations.

Article 127

There are no interim ministers. The President of the Republic may entrust a minister to assume the duties of another on grounds of incapacity while retaining his portfolio, but such responsibility may neither exceed thirty days nor be transferable to other ministers.

Article 128

Ministers are individually responsible for their own acts and for the presidential acts they countersign.

All ministers are jointly liable for criminal and violating acts of the Constitution and for laws created by the President of the Republic or agreed to by the Cabinet, even when they dissent from the majority opinion, unless they immediately resign.

Article 129

The Cabinet as a whole or the ministers separately may attend sessions of Congress and participate in its debates with the same prerogatives as members of Congress, except that of voting if they are not congressmen.

They also attend when they are invited for reporting. The President of the Cabinet or at least one of the ministers shall periodically attend the plenary sessions of Congress to respond to questions.

CHAPTER VI**RELATIONS WITH THE LEGISLATIVE BRANCH**

Article 130

Within thirty days of having assumed his functions, the President of the Cabinet and the other ministers shall attend Congress to present and discuss the general policy of the government and the main measures required for its implementation, asking for a vote of confidence. If Congress is not convened, the President of the Republic calls a special session.

Article 131

Attendance is compulsory for the Cabinet or any of the ministers whenever Congress calls upon them for interpellation.

Interpellation is made in writing, and shall be submitted by at least fifteen percent of the legal number of congressmen. For its introduction, at least a third of the number of qualified congressmen is required. A vote must be taken at the following session.

Congress determines the date and time for ministers to respond to interpellation. This may not occur or be voted upon before the third or after the tenth day following its submission.

Article 132

Congress makes effective the political liability of the Cabinet or of each minister individually, through a vote of no confidence or by defeating a vote of confidence. The latter may only be proposed by ministerial initiative.

Any motion of no confidence against the Cabinet or any minister shall be introduced by at least twenty-five percent of the legal number of congressmen. It is subject to debate and a vote between the fourth and tenth calendar day following its introduction. Its approval requires the vote of over half the legal number of congressmen.

A censured Cabinet or minister must resign.

The President of the Republic shall accept the resignation within the subsequent seventy-two hours.

Defeat of a ministerial initiative does not force the minister to resign, unless its approval was made a vote of confidence.

Article 133

The President of Cabinet may introduce before Congress a vote of confidence on behalf of the Cabinet. A total cabinet crisis occurs if the confidence is rejected or the President of Cabinet is censured, or if he resigns or is removed by the President of the Republic.

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.

Article 135

When the new Congress convenes, it may censure the Cabinet, or deny it a vote of confidence once the President of the Cabinet has explained the acts of the Executive Branch before

Congress during the parliamentary interregnum.

During the interregnum, the Executive Branch legislates through emergency decrees, which it submits to the Permanent Assembly for examination and eventual submission to Congress once it reconvenes.

Article 136

If elections are not held within the stated term, the dissolved Congress convenes by law, regains its powers, and removes the Cabinet from office. None of its members may be reappointed minister for the rest of the presidential term.

A Congress elected in this manner replaces the previous one, including the Permanent Assembly, and finishes the constitutional term of the dissolved Congress.

CHAPTER VII STATE OF EXCEPTION

Article 137

The President of the Republic, with the consent of the Cabinet, may decree for a determined time period in all or part of the national territory, and with a duty to report to Congress or Permanent Assembly, a state of exception as provided for in this article:

1. A state of emergency, in case of disturbances of the peace or the domestic order, disasters, or serious circumstances affecting the life of the Nation. In this case, the exercise of constitutional right relating to personal freedom and security, the inviolability of the home, and freedom of assembly and movement in the territory as set forth in paragraphs 9, 11, and 12 of article 2 and in paragraph 24, subparagraph f of the same article, may be restricted or suspended. Under no circumstances shall anyone be exiled.

The state of emergency period shall not exceed sixty days. Its extension requires a new decree. Under a state of emergency, the Armed Forces may assume control over domestic order if the President of the Republic so decides.

2. A state of siege, in case of invasion, foreign or civil war, or imminent danger that such events might occur, with mention to those fundamental rights whose exercise is not restricted or suspended. The applicable period shall not exceed forty-five days. When the state of siege is declared, Congress convenes by law. Its extension requires congressional approval.

CHAPTER VIII THE JUDICIAL BRANCH

Article 138

The power of administering justice emanates from the people. The Judicial Branch exercises it through its hierarchical entities in accordance with the Constitution and laws.

In all proceedings, when an incompatibility exists between a constitutional and a legal rule, judges shall decide based on the former. Likewise, they shall choose a legal rule over any other rule of lower rank.

Article 139

Principles and rights of the jurisdictional function are the following:

1. The unity and exclusivity of the jurisdictional function.

No independent jurisdiction exists, nor shall it be established, except regarding the military and arbitration.

There are no judicial proceedings by commission or delegation.

2. The independence in the exercise of the jurisdictional function.

No authority shall remove cases pending before a jurisdictional body or interfere in the exercise of its functions. Neither shall they invalidate orders under *res judicata*, halt proceedings underway, nor modify sentences or delay their execution. These provisions do not affect grants of executive clemency or the authority of congressional investigations, the exercise of which may nevertheless not interfere in the jurisdictional proceedings or have any jurisdictional effect

3. The observance of due process and jurisdictional protection.

No person shall be diverted from the jurisdiction predetermined by the law, nor shall anyone be subjected to proceedings other than those previously established, or be tried by exceptional jurisdictional bodies or special commissions created for that purpose, whatever the official title.

4. The publicity of proceedings, unless otherwise provided by law.

Judicial proceedings involving the liabilities of public officials, crimes committed through the press, and those relating to fundamental rights guaranteed by the Constitution are always public.

5. The written explanation of court orders at all levels, except merely procedural decrees, with express mention of the applicable law and the factual grounds on which they are based.

6. The plurality of the jurisdictional level.

7. Compensation, in the manner prescribed by law, for miscarriages of justice in criminal trials and arbitrary arrests, with prejudice to any liability that may be determined.

8. The principle of never failing to administrate justice, despite loopholes or deficiencies in the law.

In such cases, the general principles of law and customary law must be applied.

9. The principle of inapplicability through analogy of the criminal law and laws restricting rights.

10. The principle that no one shall be punished without judicial proceedings.

11. The most favorable application of the law to the defendant in cases of doubt or conflict between criminal laws.

12. The principle that no person shall be convicted *in absentia*.

13. The prohibition of reopening closed cases with a final order of conviction. Amnesty, pardons, stays of execution, and prescription produce the effects of *res judicata*.

14. The principle that no person shall be deprived of the right to defense at any stage of the proceedings.

Every person shall be notified immediately and in writing of the causes or reasons for his detention. In addition, he has the right to communicate in person with and be advised by the legal counsel of his choice upon being summoned or arrested by any authority.

15. The principle that every person must be informed immediately and in writing of the causes or reasons for his arrest.

16. The principle of free administration of justice and a free defense for persons of limited means, as well as for everyone in those cases stipulated by law.

17. The participation of the people in the appointment and removal of judges, in accordance with the law.

18. The obligation of the Executive Branch to collaborate in trials, when required.

19. The prohibition of the exercise of the judicial function by anyone who has not been appointed in the manner prescribed by the Constitution or the law.

Jurisdictional bodies may not confer such an office, under penalty of liability.

20. The principle that every person has the right to make analyses and criticisms of court orders and sentences, within the limits of law.

21. The right of inmates and convicted individuals to be provided suitable facilities.

22. The principle that the purpose of the criminal justice system is the reeducation, rehabilitation, and reintegration of the guilty into society.

Article 140

The death penalty shall only be applied for the crimes of treason in wartime and terrorism, in accordance with the laws and the treaties to which Peru is bound.

Article 141

The Supreme Court may decide on judicial rulings as the court of last resort, when the action is filed with a Superior Court or before the Supreme Court itself, as provided by law. It also hears annulment appeals for decisions of the Military Court, within the limits set forth in article.

Article 142

Decisions of the National Election Board concerning election matters are not subject to review, nor those of the National Council of the Magistracy regarding evaluation and ratification of judges.

Article 143

The Judicial Branch consists of jurisdictional bodies, which administer justice on behalf of the Nation, and bodies that exercise their government and administration.

The jurisdictional bodies are the following: the Supreme Court of Justice and the other courts and tribunals as determined by their organic acts.

Article 144

The Chief Justice of the Supreme Court is also the head of the Judicial Branch. The plenary session of the Supreme Court is the highest deliberation body of the Judicial Branch.

Article 145

The Judicial Branch submits its budget draft to the Executive Branch and sustains it before Congress.

Article 146

Judicial office is incompatible with any other public or private activity, except university teaching outside the working hours.

Judges receive only the compensation assigned in the Budget and revenues earned from teaching or other functions expressly prescribed by law.

The State guarantees judges:

1. Their independence. They are subject only to the Constitution and the law.
2. The irremovability of their office. They shall not be transferred without their consent.
3. Their continuance in office, as long as they show proper conduct and qualification for their function.
4. A compensation ensuring them a standard of living befitting their office and rank.

Article 147

To be Justice of the Supreme Court, one is required:

1. To be Peruvian by birth.
2. To exercise his citizenship.
3. To be at least forty-five years of age. 47

4. To have held the office of Justice of the Superior Court or Superior Prosecutor for ten years, or to have practiced the law or taught a legal discipline at the university level for fifteen years.

Article 148

Administrative resolutions under *res judicata* are susceptible to challenge through administrative action.

Article 149

Authorities of rural and native communities, in conjunction with the peasant patrols, may exercise jurisdictional functions at the territorial level in accordance with common law, provided they do not violate the fundamental rights of the individual. The law provides forms for coordination of such jurisdiction with Justices of the Peace and other bodies of the Judicial Branch.

CHAPTER IX THE NATIONAL COUNCIL OF THE MAGISTRACY

Article 150

The National Council of the Magistracy is responsible for the selection and appointment of judges and prosecutors, except those chosen through popular election.

The National Council of the Magistracy is independent and is governed by its organic act.

Article 151

The Academy of the Magistracy, which is part of the Judicial Branch, is responsible for the education and training of judges and prosecutors at all levels for the purposes of qualification.

Completion of the special studies required by the Academy is necessary for promotion.

Article 152

Justices of the Peace are chosen by popular election.

The election, its requirements, jurisdictional implementation, training, and duration of office are governed by law.

The law may establish the election of trial judges and determine the relevant mechanisms.

Article 153

Judges and prosecutors are prohibited to participate in politics, unionize, or declare themselves on strike.

Article 154

The duties of the National Council of the Magistracy are the following:

1. To appoint, following merits-based recruitment and personal evaluation, judges and prosecutors at all levels. Such appointments require the vote of two-thirds of the legal number of its members.

2. To ratify judges and prosecutors at all levels every seven years. Those not confirmed may not be readmitted to the Judicial Branch, or the Office of the Prosecutor General. The confirmation process is independent of the disciplinary measures.

3. To apply the penalty of removal to Justices of the Supreme Court and Supreme Prosecutors, and, at the request of the Supreme Court or the Board of Supreme Prosecutors, respectively, judges and prosecutors of all instances. The final and detailed order, following a hearing with the party in question, is not contestable.

4. To award judges and prosecutors the official title accrediting their status.

Article 155

The members of the National Council of the Magistracy, in accordance with the relevant law, are the following:

1. One elected by the Supreme Court in plenary session by secret ballot.
2. One elected by the Board of Supreme Prosecutors by secret ballot.
3. One elected by the members of the National Bar Associations by secret ballot.
4. Two elected by the members of the other professional associations of the country by secret ballot, and in accordance with the law.
5. One elected by the rectors of national universities by secret ballot.
6. One elected by the rectors of private universities by secret ballot.

The membership of the National Council of the Magistracy may be expanded by its own decision to as many as nine members, with two additional members elected by the Council by secret ballot from individual lists presented by institutions representing labor and corporate sectors.

Regular members of the National Council of the Magistracy are elected, together with their substitutes, for five-year terms.

Article 156

Requirements to become a member of the National Council of the Magistracy are the same as those for the Justices of the Supreme Court, except as provided in paragraph 4 of article 147. A member of the National Council of the Magistracy enjoys the same benefits and rights as a Justice of the Supreme Court and is subject to the same obligations and incompatibilities.

Article 157

The members of the National Council of the Magistracy may be removed from office by a decision of Congress due to gross misconduct, with the affirmative vote of two-thirds of the legal number of congressmen.

CHAPTER X THE OFFICE OF THE PROSECUTOR GENERAL

Article 158

The Office of the Prosecutor General is autonomous. It is headed by the Prosecutor General of the Nation, who is elected by the Board of Supreme Prosecutors. The term of office for the Prosecutor General of the Nation is three years and it may be extended for another two years if reelected. Members of the Office of the Prosecutor General enjoy the same rights and prerogatives, and are subject to the same duties and legal incompatibilities, as their counterparts in the Judicial Branch. Likewise, their appointments are subject to the same requirements and procedures as those of members of the Judicial Branch within their respective categories.

Article 159

It is the duty of the Office of the Prosecutor General:

1. To bring a lawsuit, *ex officio* or by private complaint, in defense of the legal order or public interests protected by law.
2. To watch over the independence of jurisdictional bodies, and the fair administration of justice.
3. To represent society in legal proceedings.

4. To conduct criminal investigations from their initiation. To that purpose, the National Police is obliged to enforce the orders of the Office of the Prosecutor General within the scope of its authority.
5. To institute criminal proceedings *ex officio* or by private action.
6. To give an opinion prior to judicial orders in cases set forth in the law.
7. To exercise legislative initiative in lawmaking, and inform Congress or the President of the Republic about legal loopholes and errors.

Article 160

The Budget draft of the Office of the Prosecutor General is approved by the Board of Supreme Prosecutors, and submitted to the Executive Branch. It is sustained before the Executive Branch and before Congress.

CHAPTER XI THE OFFICE OF THE OMBUDSMAN

Article 161

The Office of the Ombudsman is autonomous. State bodies are obliged to cooperate with the Office of the Ombudsman whenever it requests their help.

The structure of the Office of the Ombudsman at the national level is set up by law.

The Ombudsman is elected and removed from office by the Congress with the votes of two-thirds of the legal number of members, and enjoys the same immunity and prerogatives as congressmen.

To be elected Ombudsman, a candidate must be at least thirty-five years of age and an attorney-at-law. The term of the office lasts five years and does not receive a binding mandate. He possesses the same incompatibilities as the Justices of the Supreme Court.

Article 162

It is the duty of the Office of the Ombudsman to defend the constitutional and fundamental rights of the person and the community, and to ensure the enforcement of the state administration duties, as well as the provision of public services to citizens. The Ombudsman submits a report to Congress once a year and whenever the latter requests one. He may initiate legislation and recommend measures to facilitate the improved performance of his duties.

The Office of the Ombudsman submits its budget draft to the Executive Branch, which must be sustained before the Executive Branch and before Congress.

CHAPTER XII SECURITY AND NATIONAL DEFENSE

Article 163

The State guarantees the security of the Nation by means of the National Defense System.

The national defense is comprehensive and permanent. It is developed internally and externally. Every person and corporate entity is obliged to participate in the national defense, in accordance with the law.

Article 164

The direction, preparation, and exercise of the national defense are performed through a system, whose organization and functions are determined by law. The President of the Republic is the head of the National Defense System.

For the purposes of national defense, the law determines the extent and procedures for mobilization.

Article 165

The Armed Forces consist of the Army, the Navy, and the Air Force. Their fundamental purpose is to guarantee the independence, sovereignty, and territorial integrity of the Republic. They assume control of internal order in the case outlined in article 137 of the Constitution.

Article 166

It is the primary duty of the National Police to guarantee, maintain, and restore internal order. They protect and aid individuals and the community. They ensure the enforcement of laws and the security of both public and private property. They prevent, investigate, and fight crime. They guard and control the national borders.

Article 167

The President of the Republic is the Commander-in-Chief of the Armed Forces and the National Police.

Article 168

Relevant acts and regulations establish the organization, functions, specialization, training, and use of the Armed Forces and the National Police, as well as their internal disciplinary regimes.

The Armed Forces organize their reserves and deploy them in accordance with the needs of the national defense, according to law.

Article 169

The Armed Forces and the National Police are not deliberative bodies. They are subordinate to constitutional power.

Article 170

The law allocates funds for the logistical requirements of the Armed Forces and the National Police. Such funds must be earmarked for institutional purposes, under the control of the authority set forth in the law.

Article 171

The Armed Forces and the National Police take part in the economic and social development of the country, and in its civil defense, according to law.

Article 172

The Executive Branch annually fixes the number of members of the Armed Forces and the National Police. Their resources are allotted in the Budget Act.

Promotions are granted in accordance with the law. The President of the Republic grants the promotions of generals and admirals in the Armed Forces, as well as generals in the National Police upon recommendation from the relevant institution.

Article 173

In the case of on-duty crimes, members of the Armed Forces and the National Police are subject to their respective jurisdictions, and to the Code of Military Justice. The Code provisions do not apply to civilians, except in cases of treason and terrorism as determined by law. The cassation appeal referred to in article 141 only applies when the death penalty is imposed.

Those who violate the rules of Mandatory Military Service will also be subject to the Code of Military Justice.

Article 174

Ranks and honors, salary, and retirement pensions for officers in the Armed Forces and the National Police are equivalent. The law determines the respective equivalences for career members of the military or police who lack the rank or position of an officer. In such cases, the cited rights may not be forfeited except by court rulings.

Article 175

Only the Armed Forces and the National Police may possess and use weapons of war. The weapons existing in the country, as well as those manufactured in or introduced into the country, become State property without any legal process or indemnification.

The manufacture of weapons of war by the private industry in those cases outlined by the law is exempted of this prohibition.

The law regulates the manufacture, trade, possession, and use by private parties of weapons other than those used for war.

CHAPTER XIII THE ELECTORAL SYSTEM

Article 176

The electoral system has the purpose of ensuring that elections express the free, authentic, and spontaneous will of citizens, and that the vote count mirrors the accurate and timely reflection of the will of voters expressed at the polls by direct suffrage.

The basic functions of the system are: planning, organizing, and holding elections, referendum or other popular vote, maintaining and guarding the consolidated register for identification of voters, and recording modifications to civil status.

Article 177

The electoral system consists of the National Election Board, the National Office of Elections, and the National Identification and Civil Status Registry. They are autonomous and coordinate their work with each other, in accordance with their authorities.

Article 178

It is the duty of the National Election Board:

1. To oversee the legality of suffrage and the conduct of elections, referendum, and other popular vote, as well as to prepare electoral rolls.
2. To maintain and oversee the register of political organizations.
3. To ensure the enforcement of rules on political organizations and other provisions concerning electoral matters.
4. To administer justice on electoral matters.
5. To declare the winners in elections and issue their credentials, as well as to announce the results of referendum or other popular vote.
6. To perform other functions provided for in the law.

In electoral matters, the National Election Board has the power to initiate legislation and to submit to the Executive Branch the Budget draft for the electoral system with separate entries for each body of the system. It sustains the draft before the Executive and then before Congress.

Article 179

The highest authority of the National Election Board is vested in its Plenary Assembly, composed of five members:

1. One elected by secret ballot by the Supreme Court from among its retired or active justices. In the latter case, the elected member is granted leave. The representative of the Supreme Court presides over the National Election Board.
2. One elected by secret ballot by the Board of Supreme Prosecutors from among its retired or active members. In the latter case, the elected member is granted leave.
3. One elected by secret ballot by the Lima Bar Association from among its membership.
4. One elected by secret ballot by the deans of law schools of public universities from among their former deans.
5. One elected by secret ballot by the deans of law schools of private universities from among their former deans.

Article 180

The members of the Plenary Assembly of the National Election Board shall not be under forty-five years of age or over seventy. They are elected for four-year terms and may be reelected.

The law regulates the renewal of membership in alternating elections every two years.

The office is a full-time, remunerated post. It is incompatible with any other public office, except for part-time teaching.

Candidates to elective office shall neither be members of the Plenary Assembly of the Election Board, citizens holding national leadership posts in political organizations, nor those who have held such posts during the four years preceding their candidacy.

Article 181

The Plenary Assembly of the National Election Board examines facts with discretionary judgment and resolves disputes based on the law and the general principles of law. On issues concerning elections, referendum, or other popular vote, its decisions are final, definitive, and non reversible. No appeal may be filed against them.

Article 182

The Head of the National Office of Elections is appointed by the National Council of the Magistracy for a renewable four-year term, and may be removed from office by the same Council for gross misconduct. He is subject to the same incompatibilities as the members of the Plenary Assembly of the National Election Board.

His main functions are to organize elections, referendum, and other popular vote, including the preparation of the budget for his office and the design of the voting ballot. It is also his duty to distribute election forms and other materials needed for elections and to announce the results. He provides continued information on the vote count from the time the tally begins at polling stations. He performs other duties, as set forth by law.

Article 183

The Head of the National Identification and Civil Status Registry is appointed by the National Council of the Magistracy for a renewable four-year term, and may be removed from office by the Council for gross misconduct. He is subject to the same incompatibilities as the members of the Plenary Assembly of the National Election Board.

The National Identification and Civil Status Registry is in charge of the registration of births, marriages, divorces, deaths, and other acts modifying civil status. It issues the respective certificates, and prepares and updates the electoral roll. Likewise, it provides the National

Election Board and the National Office of Elections with the information necessary to perform their duties. It maintains identification records of citizens and issues identification documents. It performs other duties, as set forth by law.

Article 184

The National Election Board declares the nullity of an election process, referendum or any other popular vote when the number of void or blank votes, jointly or separately, exceeds two-thirds of the number of votes cast. The law may fix different ratios for municipal elections.

Article 185

In any kind of election, referendum or other type of popular vote, a tally shall be performed publicly and uninterruptedly at polling stations. The results may solely be reviewed in case of material error or challenge, all of which is resolved according to law.

Article 186

The National Office of Elections issues the instructions and provisions needed to maintain order and safeguard personal freedom during elections. The Armed Forces and the National Police must enforce these provisions.

Article 187

In case of multi-party elections there is proportional representation, in accordance with the system provided for in the law.

The law shall contain special provisions to facilitate the voting of Peruvians living abroad.

CHAPTER XIV DECENTRALIZATION*

Article 188

Decentralization is a form of democratic organization and a mandatory, continued policy of the State, whose essential purpose is the comprehensive development of the country. The decentralization process is carried out in stages, in a progressive and orderly manner, following criteria that permit the proper distribution of jurisdictions and transfer of resources from the national government to local and regional governments.

The branches of government and autonomous state bodies, as well as the Budget of the Republic, are decentralized in accordance with the law.

Article 189

The territory of the Republic is divided into regions, departments, provinces, and districts, in whose boundaries a government is exercised and organized at national, regional, and local levels in the terms defined by the Constitution and the law, preserving the integrity and unity of the State and the Nation.

The regional level of government consists of regions and departments. The local level of government consists of provinces, districts, and villages.

Article 190

Regions are created on the basis of contiguous areas with historical, cultural, administrative, and economic relations, thus comprising sustainable geo-economic unities.

The regionalization process shall begin by electing governments in the current departments and the Constitutional Province of Callao. These are regional governments.

Two or more contiguous departments may become a region by conducting a referendum, in accordance with the law. Likewise, two or more contiguous provinces and districts may change their regional constituency by following the same procedure.

Additional authorities and faculties, as well as special incentives, given to these newly formed regions shall be determined by law.

While the integration process is underway, two or more regional governments may create coordination mechanisms between themselves. The relevant law will regulate these mechanisms.

Article 191

Regional governments enjoy political, economic, and administrative autonomy on pertinent matters within their jurisdiction. They coordinate with municipalities without interfering with their functions and authorities. The basic organic structure of these governments consists of the Regional Council as the regulatory and oversight body, the President as the executive organ, and the Regional Coordination Council formed of provincial mayors and representatives of civil society as a consultative body to coordinate with municipalities, with their functions and authorities set forth in the law.

The Regional Council shall have a minimum of seven (7) members and a maximum of twenty-five (25), with at least one (1) for each province, and the rest, in accordance with the law, determined by a criterion of electoral population.

The president, together with a vice president, is elected by means of direct suffrage for a period of four (4) years and may be reelected. The members of the Regional Council are elected likewise, and for the same term. The mandate of such authorities is, according to law, revocable but non-renounceable, except in the cases provided by the Constitution.

In order to run for the office of President of the Republic, Vice President, member of the National Parliament, or Mayor, the presidents of regional governments must resign their office six (6) months in advance of the respective election.

The law determines the minimum percentages to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional councils. The same applies for municipal councils.*

*** Article amended by Law No. 28607, published on October 4th, 2005. Before the amendment, this article stated:**

Regional governments enjoy political, economic, and administrative autonomy on pertinent matters within their jurisdiction. They coordinate with municipalities without interfering with their functions and authorities.

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The Regional Council will have a minimum of seven (7) members and a maximum of twenty-five (25), with at least one (1) for each province, and the rest, in accordance with the law, determined by on a criterion of electoral population.

The president, together with a vice president, is elected by means of direct suffrage for a period of four (4) years and may be reelected. The members of the Regional Council are elected likewise, and for the same term. The mandate of such authorities is revocable but non renounceable, according to law.

The law determines the minimum percentages to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional councils. The same applies for municipal councils.

Article 192

Regional governments promote regional development and economy; encourage investments, activities, and public services within their jurisdiction, in harmony with national and local development plans and policies.

It is their duty:

1. To approve their internal organization and budget.
2. To formulate and adopt a regional development plan, agreed to by the relevant municipalities and the civil society.
3. To administrate their property and revenue.
4. To regulate and issue permits, licenses, and authorizations on the services under their responsibility.
5. To promote regional socioeconomic development and execute the corresponding plans and programs.
6. To issue the rules concerning regional management.
7. To promote and regulate activities and/or services regarding agriculture, fishing, industry, agro-industry, trade, tourism, energy, mining, roads, communications, education, health, and the environment, according to law.
8. To encourage competitiveness, investments, and financing for the development of infrastructure projects and works at the regional level.
9. To initiate legislation on pertinent matters and issues within their jurisdiction.
10. To execute other functions inherent to their authority, according to law.

Article 193

The property and revenue of regional governments are the following:

1. Their own chattels and real property.
2. Specific fund transfers provided for in the annual Budget Act.
3. Taxes created by law in their favor.
4. Economic benefits originated in privatizations, concessions, and services they offer, according to law.
5. Resources allotted from the Regional Compensation Fund with a redistributive character, according to law.
6. Resources resulting from natural resource royalties (*canon*).
7. Resources resulting from their financial operations, including those performed with a State guarantee, according to law.
8. Other resources provided for by law.

Article 194

Provincial and district municipalities are bodies of local government. They enjoy political, economic, and administrative autonomy on the matters within their jurisdiction. Municipalities of villages are created pursuant to law.

The organic structure of local governments consists of the Municipal Council as the regulatory and oversight body and the Office of the Mayor as the executive organ, with their functions and powers as provided by law.

Mayors and council members are elected by direct suffrage for a period of four (4) years and may be reelected. Their mandate is revocable but non renounceable, according to law, except in cases provided by the Constitution.

In order to run for the office of President of the Republic, Vice President, member of the National Parliament or president of a regional government, Mayors must resign their office six (6) months in advance of the respective election.*

*** Article amended by Law No. 28607, published on October 4th, 2005. Before the amendment, this article stated:**

Provincial and district municipalities are bodies of local government. They enjoy political, economic, and administrative autonomy on the matters within their jurisdiction. Municipalities of villages are created pursuant to law.

The organic structure of local governments consists of the Municipal Council as the regulatory and oversight body and the Office of the Mayor as the executive organ, with the functions and powers as set forth in the relevant law.

Mayors and council members are elected by direct suffrage for a period of four (4) years and may be reelected.

Their mandate is revocable but non renounceable, according to law.

Article 195

Local governments stimulate development, the local economy, and the delivery of public services within their responsibility, in harmony with national and regional development plans and policies.

It is their duty:

1. To approve their internal organization and budget.
2. To adopt a local development plan, agreed to by the civil society.
3. To administrate their own property and revenue.
4. To create, amend, and abolish municipal taxes, rates, duties, licenses, and levies, in accordance with the law.
5. To organize, regulate, and manage local public services within their responsibility.
6. To plan rural and urban development of their circumscriptions, including zoning as well as city and site planning.
7. To encourage competitiveness, investments, and financing for the development of projects and works of local infrastructure.
8. To develop and regulate activities and/or services regarding education, health, housing, sanitation, environment, sustainability of natural resources, public transportation, circulation and traffic, tourism, preservation of archeological and historical monuments, culture, recreation, and sports, according to law.
9. To initiate legislation on pertinent matters and issues within their jurisdiction.
10. To execute other functions inherent to their authority, according to law.

Article 196

The property and revenue of municipalities are the following:

1. Their own chattels and real property.
2. Taxes created by law in their favor.
3. Municipal taxes, rates, duties, licenses, and levies created by municipal ordinances, according to law.
4. Economic benefits originated in privatizations, concessions, and services they offer, according to law.
5. Resources allotted from the Municipal Compensation Fund with a redistributive nature, according to law.

6. Specific fund transfers provided for in the annual Budget Act.
7. Resources resulting from natural resource royalties (*canon*).
8. Resources resulting from their financial operations, including those performed with a State guarantee, according to law.
9. Other resources determined by law.

Article 197

Municipalities promote, support, and regulate citizen participation in local development.

Additionally, they offer citizen security services in cooperation with the National Police of Peru, according to law.

Article 198

The Capital of the Republic does not belong to any region. It enjoys special treatment in decentralization laws and in the Municipalities Act. The Metropolitan Municipality of Lima exerts jurisdiction within the territory of the province of Lima.

Likewise, municipalities located on border zones receive special treatment in the Municipalities Act.

Article 199

Local and regional governments are controlled by their own oversight bodies and by those other bodies set forth in the Constitution or any other statute. They are subject to control and supervision by the Office of the Comptroller General of the Republic, which executes a decentralized and continued oversight system. Such governments formulate their budgets with citizen participation, and are accountable for their annual execution, in accordance with the law.

** Chapter amended by Law No. 27680, published on March 7th, 2002. Before the amendment, this chapter stated:*

**CHAPTER XIV
DECENTRALIZATION, REGIONS, AND MUNICIPALITIES****Article 188**

Decentralization is a continued process whose aim is the comprehensive development of the country.

Article 189

The territory of the Republic is divided into regions, departments, provinces, and districts, in whose borders there is a unitary government operating in a decentralized and deconcentrated manner.

Article 190

The regions are formed by the initiative and mandate of the populations belonging to one or more contiguous departments. Adjoining provinces and districts can also integrate or change their circumscription.

In both cases, a referendum is the proper procedure to follow, in accordance with the law. 62

Article 191

Provincial and district municipalities, as well as delegated municipalities in accordance with the law, are local governments agencies. They enjoy political, economic, and administrative autonomy in the pertinent matters within their jurisdictions.

It is the duty of the municipal council to perform regulating and oversight functions; the Office of the Mayor performs the executive functions.

The Mayor and city council members are elected by direct suffrage for five-year terms and may be reelected. Their mandate is revocable but non renounceable. They enjoy the prerogatives set forth by the law.

Article 192

Municipalities have the duty:

1. To approve their internal organization and budget.
2. To administrate their own property and revenue.
3. To create, amend, and abolish municipal taxes, rates, duties, licenses, and levies.
4. To organize, regulate, and manage local public services within their responsibility.
5. To plan rural and urban development of their circumscriptions and to execute relevant plans and programs.
6. To take part in the management of activities and services inherent to the State, according to law.
7. To perform other functions, in accordance with the law.

Article 193

The property and revenue of municipalities include:

1. Their own property and income.
2. Taxes created by law in their favor.
3. Municipal taxes, rates, duties, licenses, and levies created by the Municipal Council.
4. Resources allotted by the Municipal Compensation Fund, created by law considering municipal taxes.
5. Budget transfers from the central government.
6. Resources allotted from natural resource royalties (canon).
7. Other resources determined by law.

Article 194

Municipalities may associate or make cooperative agreements among themselves to execute public works and services.

Article 195

The law regulates the cooperation between the National Police and municipalities regarding citizen security.

Article 196

The capital of the Republic, provincial capital cities with metropolitan status, and department capital cities in national border areas receive special treatment in the Municipalities Act. The same special treatment applies to the Constitutional Province of Callao and provinces in national border areas.

Article 197

Regions enjoy political, economic, and administrative autonomy in the matters within their competencies.

Within their jurisdiction, they manage the coordination and execution of regional socioeconomic plans and programs, as well as the management of activities and services inherent to the State, according to law. The law establishes their property and revenue. Regions support local governments. They do not replace them, nor duplicate their action or jurisdiction.

Article 198

The organized structure of the regions and their specific functions are determined by the organic act.

The highest authorities of the region are the President and the Regional Coordination Council. The President of the region is elected by direct suffrage for a five-year term and may be reelected. His mandate is revocable but non-renounceable. He enjoys the prerogatives set forth in the law.

The Regional Coordination Council consists of the number of members set forth in the law. Provincial mayors or their representatives are ex officio members of said Council.

Article 199

Regions and municipalities are accountable for the execution of their budgets to the Office of the Comptroller General of the Republic. They are overseen in accordance with the law.

CONSTITUTIONAL PROTECTIONS

Article 200

The following are the constitutional guarantees:

1. The writ of *habeas corpus*, which operates in case of an act or omission by any authority, official, or person that violates or threatens individual freedom or related constitutional rights.
2. The writ of *amparo*, which operates in case of an act or omission by any authority, official, or person that violates or threatens the other rights recognized by the Constitution, with the exception of those mentioned in the following subparagraph. It does not take effect against legal rules or court orders from regular judicial proceedings.*

*** Subparagraph amended by Law No. 26470, published on June 12th, 1995. Before the amendment, this subparagraph stated:**

2. *The writ of amparo, which operates in case of an act or omission by any authority, official, or person that violates or threatens the other rights recognized by the Constitution. It does not take effect against legal rules or court orders from regular judicial proceedings.*

□ * Subparagraph amended by Law No. 26470, published on June 12th, 1995. Before the amendment, this subparagraph stated:

3. *The writ of habeas data, which operates against the act or omission by authority, official or person that violates or threatens the rights referred to in article 2, paragraphs 5, 6, and 7 of this Constitution.*

3. The writ of *habeas data*, which operates in case of an act or omission by any authority, official, or person that violates or threatens the rights referred to in article 2, subparagraphs 5, and 6 of this Constitution. □*

4. The writ of unconstitutionality, which operates against rules with the status of a law: laws, legislative decrees, emergency decrees, treaties, standing rules of Congress, regional general regulations, and municipal ordinances that infringe upon the Constitution either in form or in substance.

5. Popular action, *acción popular*, which operates in case of infringement of the Constitution and the law, against regulations, administrative rules, and general resolutions and decrees, irrespective of the authority that issues these rules.
6. The writ of *mandamus*, which operates against any authority or official who refuses to abide by a legal rule or administrative act, without prejudice to any legal liabilities.

Organic acts regulate the exercise of these protections and the effect of the declaration of unconstitutionality or illegality of a rule or statute. The exercise of the writs of *habeas corpus* and *amparo* is not suspended during enforcement of the states of exception referred to in article 137 of the Constitution.

When petitions concerning these constitutional rights are filed with regard to restricted or suspended rights, the corresponding jurisdictional body examines the reasonability and proportionality of the restrictive act. The judge is not entitled to challenge the declaration of the state of emergency or siege.

Article 201

The Constitutional Court is the controlling body of the Constitution. It is autonomous and independent. It consists of seven members who are elected for five-year terms.

In order to become a member of the Constitutional Court, one must fulfill the same requirements as the Justices of the Supreme Court. Members of the Constitutional Court enjoy the same immunity and prerogatives as congressmen. The same incompatibilities apply to them, and they may not be immediately reelected.

Members of the Constitutional Court are elected by Congress with the positive vote of two-thirds of the legal number of its members. Judges and prosecutors who have not resigned their offices a year in advance are not eligible to be Constitutional Court magistrates.

Article 202

It is the duty of the Constitutional Court:

1. To hear, in original jurisdiction, the writ of unconstitutionality.
2. To hear, as a court of last resort, orders refusing petitions of *habeas corpus*, *amparo*, *habeas data*, and *mandamus*.
3. To hear disputes over jurisdiction or over powers assigned by the Constitution, in accordance with the law.

Article 203

The following are entitled to bring a writ of unconstitutionality:

1. The President of the Republic.
2. The Prosecutor General.
3. The Ombudsman.
4. Twenty-five percent of the legal number of congressmen.
5. Five thousand citizens, whose signatures shall be verified by the National Election Board. If the statute under question is a municipal ordinance, it may be challenged by one percent of citizens from the respective territorial division, provided that this percentage does not exceed the number of signatures cited above.
6. Regional presidents, with the advice and consent of the Regional Coordination Council or provincial mayors acting upon the consent of their councils, in matters within their jurisdiction.
7. Professional associations on matters within their fields.

Article 204

The ruling of the Constitutional Court declaring the unconstitutionality of a piece of legislation is published in the official gazette. The law becomes ineffective on the day following such publication.

The ruling of the Court declaring a statute to be, wholly or in part, unconstitutional does not have retroactive effects.

Article 205

Once all legal resorts provided for by national legislation have been used and denied, the party deeming itself injured in terms of the rights granted by the Constitution may appeal to international courts or bodies established by treaties or agreements to which Peru is bound.

TITLE VI CONSTITUTIONAL REFORM

Article 206

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.

FINAL AND TRANSITORY PROVISIONS

FIRST

The pension scheme set forth by Decree-law No. 20530 is officially declared closed. Therefore, as soon as this constitutional reform goes into effect:

1. New admissions or readmissions to the Decree-law No. 20530 pension scheme are prohibited.
2. Those workers who, while eligible to join that pension scheme, have not qualified to receive their corresponding pension will have to choose between the National Pension System and the Private System of Pension Fund Management Firms.

Due to reasons of social interest, the new pension rules set forth in the relevant law will apply immediately to workers and pensioners of pension schemes run by the State, as appropriate.

The adjustment between pension and salary levels is prohibited, as well as the reduction of the amount of pensions smaller than one taxation unit.

The relevant law will provide for a progressive application of limits to pensions exceeding one taxation unit.

The budget savings stemming from the application of new pension rules will be used to increase the lowest pensions, in accordance with the law.

The modifications introduced to current pension schemes, as well as the new pension schemes to be established in the future, shall have to abide by the financial sustainability and non adjustment criteria.

The national government, through its relevant agency, shall institute legal proceedings aimed to obtain the judicial declaration of nullity for those illegally obtained pensions, except those protected by *res judicata* sentences that have expressly determined the merits of a case or those whose actions have expired.*

*** *First Final and Transitory Provision amended by Law No. 28389, published on November 17th, 2004.***

Before the amendment, this provision stated:

The new mandatory social regimes to be established regarding pension schemes for new public workers will not affect rights legally obtained, particularly the pension schemes established by Decree-laws 19990 and 20530 and their amendments.

SECOND

The State guarantees the timely pay and periodic adjustment of pensions under its administration, in accordance with the budget provisions made for such purposes and the possibilities of the national economy.

THIRD

As long as there continue to exist different systems of work between private and public sectors, in no event and for no reason shall the benefits acquired under the two systems be cumulative. Any actions or orders contradicting this provision are null and void.

FOURTH

Rules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements regarding those rights that have been ratified by Peru.

FIFTH

Municipal elections are alternated with general elections so that the former are held halfway through the presidential term, in accordance with the law. To that effect, the term of mayors and council members elected during the next two municipal elections will last three and four years respectively.

SIXTH

The term of mayors and council members elected in the 1993 election and its supplementary elections ends on December 31st, 1995.

SEVENTH

The first general election process after the Constitution takes effect shall be held using the single constituency system while the decentralization process continues.

EIGHTH

The provisions of this Constitution so requiring are the subjects of constitutional development laws.

The following provisions have priority:

1. Decentralization rules and, among them, those facilitating the election of new authorities in 1995 at the latest.
2. Those rules concerning the mechanisms and process of gradually eliminating legal monopolies granted in concessions and licenses for public services.

NINTH

The renewal of membership of the National Election Board, established according to this Constitution, begins with those elected by the Lima Bar Association and law schools of public universities.

TENTH

The law provides for the manner in which offices, officials, and employees of the Civil Registry of local governments and those of the Election Registry, shall merge into the National Identification and Civil Status Registry.

ELEVENTH

The provisions of this Constitution requiring new or increased public expenses are applied gradually.

TWELFTH

The departmental political organization of the Republic includes the following departments: Amazonas, Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Cusco, Huancavelica, Huánuco, Ica, Junín, La Libertad, Lambayeque, Lima, Loreto, Madre de Dios, Moquegua, Pasco, Piura, Puno, San Martín, Tacna, Tumbes, Ucayali, and the Constitutional Province of Callao.

THIRTEENTH

While the regions remain unformed and until their presidents are elected according to this Constitution, the Executive Branch determines the jurisdiction of the Transitory Councils of Regional Administration, now in operation, pursuant to the area of each of the departments established in the country.

FOURTEENTH

This Constitution, once adopted by the Democratic Constitutional Congress, takes effect in accordance with the result of the referendum regulated by constitutional law.

FIFTEENTH

The provisions of this Constitution related to the number of congressmen, terms of legislative mandate, and the Permanent Assembly do not apply to the Democratic Constitutional Congress.

SIXTEENTH

Once promulgated, this Constitution replaces the 1979 Constitution.

SPECIAL TRANSITORY PROVISIONS*

** First and Second special transitory provisions added by Law No. 27365, published on November 5th, 2000.*

FIRST

The President and the Vice Presidents of the Republic elected in the 2000 general elections will terminate their mandates on July 28th, 2001. Congressmen elected in the same electoral process will terminate their representation on July 26th, 2001. As an exception, the terms of office set forth in articles 90 and 112 of this Constitution do not apply to them.

SECOND

With respect to the election process to be held in 2001, the term provided in the first paragraph of article 91 of this Constitution will be four months. 70

THIRD

The National Election Board allocates four seats for the provinces of Lima, without affecting the existing national apportionment and the other six in accordance with the law. □

□ *Third special transitory provision added by Law No. 29402, published on September 8th, 2009.* 71

DECLARATION

THE DEMOCRATIC CONSTITUTIONAL CONGRESS HEREBY DECLARES that Peru, a country in the Southern Hemisphere, connected to Antarctica by its projecting coastlines, as well as by ecological factors and historical background; and according to the rights and obligations it enjoys as a consultative party to the Antarctic Treaty, encourages the preservation of Antarctica as a zone of peace devoted to scientific research, and the enforcement of an international regime that, without impairing the legitimate rights of our Nation, promotes, in the benefit of all mankind, a rational and equitable development of Antarctic resources, and ensures the protection and preservation of the ecosystem of that continent.

TABLE OF CONTENTS**THE PERSON AND THE SOCIETY**

Articles 1 – 42

CHAPTER I

FUNDAMENTAL RIGHTS OF THE PERSON

Articles 1 – 3

CHAPTER II

SOCIAL AND ECONOMIC RIGHTS

Articles 4 – 29

CHAPTER III

POLITICAL RIGHTS AND DUTIES

Articles 30 – 38

CHAPTER IV

PUBLIC SERVICE

Articles 39 – 42

THE STATE AND THE NATION

Articles 43 – 57

CHAPTER I

THE STATE, THE NATION, AND THE TERRITORY

Articles 43 – 54

CHAPTER II

TREATIES

Articles 55 – 57 73

THE ECONOMIC SYSTEM

Articles 58 – 89

CHAPTER I

GENERAL PRINCIPLES

Articles 58 – 65

CHAPTER II

THE ENVIRONMENT AND THE NATIONAL RESOURCES

Articles 66 – 69

CHAPTER III

PROPERTY

Articles 70 – 73

CHAPTER IV

TAX AND BUDGET REGIME

Articles 74 – 82

CHAPTER V

CURRENCY AND BANKING

Articles 83 – 87

CHAPTER VITHE AGRICULTURAL REGIME
AND RURAL AND NATIVE COMMUNITIES

Articles 88 – 89

THE STRUCTURE OF THE STATE

Articles 90 – 199

CHAPTER I

THE LEGISLATIVE BRANCH

Articles 90 – 102 74

CHAPTER II

THE LEGISLATIVE FUNCTION

Articles 103 – 106

CHAPTER III

LAWMAKING AND ENACTMENT

Articles 107 – 109

CHAPTER IV

THE EXECUTIVE BRANCH

Articles 110 – 118

CHAPTER V

THE CABINET

Articles 119 – 129

CHAPTER VI

RELATIONS WITH THE LEGISLATIVE BRANCH

Articles 130 – 136

CHAPTER VII

STATE OF EXCEPTION

Article 137

CHAPTER VIII

THE JUDICIAL BRANCH

Articles 138 –149

CHAPTER IX

THE NATIONAL COUNCIL OF THE MAGISTRACY

Articles 150 –157

CHAPTER X

THE OFFICE OF THE PROSECUTOR GENERAL

Articles 158 –160

CHAPTER XI

THE OFFICE OF THE OMBUDSMAN

Articles 161 –162 75 **CHAPTER XII**

SECURITY AND NATIONAL DEFENSE

Articles 163 –175

CHAPTER XIII

THE ELECTORAL SYSTEM

Articles 176 –187

CHAPTER XIV

DECENTRALIZATION

Articles 188 –199

CONSTITUTIONAL PROTECTIONS

Articles 200 –205

CONSTITUTIONAL REFORM

Article 206

FINAL AND TRANSITORY PROVISIONS

SPECIAL TRANSITORY PROVISIONS

APPENDIX

DECLARATION