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

**PERU**

**DRAFT CONSTITUTIONAL AMENDMENTS TO ARTICLE 99 OF THE  
CONSTITUTION OF PERU CONCERNING THE ACCOUNTABILITY  
OF MEMBERS OF ELECTION MANAGEMENT BODIES OF PERU\***

*\*Unofficial translation from Spanish into English*

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**I. 4333/2022-CR - LAW OF CONSTITUTIONAL REFORM THAT MODIFIES ARTICLE 99 TO INCORPORATE THE MEMBERS OF THE JNE, THE HEAD OF THE ONPE AND THE HEAD OF THE RENIEC.**

The undersigned members of the **Parliamentary Group ACCION POPULAR**, at the initiative of Congressman **LUIS ANGEL ARAGOH CARRENO**, exercise their right of legislative initiative conferred by articles 102 paragraph 1) and 107 of the Political Constitution of Peru; and in accordance with articles 2 and 76" numeral 2 of the Regulations of the Congress of the Republic, present the following:

**BILL**

**THE CONGRESS OF THE REPUBLIC;**

It has given the following Law:

**CONSTITUTIONAL REFORM LAW AMENDING ARTICLE 99 TO INCORPORATE THE MEMBERS OF THE JNE, THE HEAD OF THE ONPE AND THE HEAD OF THE RENIEC.**

**Article 1.- Amend article of the Political Constitution of Peru**

Amend article of the Political Constitution of Peru Article 99 of the Political Constitution of Peru is hereby amended to read as follows:

***Charge of infringement of the Constitution***

***Article 99.- It is incumbent upon the Standing Committee to impeach before Congress: the President of the Republic; the representatives to Congress; the Ministers of State; the magistrates of the Constitutional Court; the members of the National Board of Justice; the members of the National Jury of Elections; the Head of the National Office of Electoral Processes; the Head of the National Registry of Identification and Civil Status; the Judges of the Supreme Court; the Supreme Prosecutors; the Ombudsman and the Comptroller General of the Republic, for infringement of the Constitution and for any offence committed by them in the performance of their duties and until the end of their term of office, who have ceased to hold office.***

**Article 2. - Adequacy of rules**

The Rules of Procedure of the Congress, as well as the rules of the autonomous constitutional bodies covered by this Constitutional Reform Law, should be adapted in order to give effectiveness and legal certainty to the application of this law.

## **EXPLANATORY MEMORANDUM**

### **I. RATIONALE**

The purpose of this constitutional reform project is to comply with the exhortation made by the Constitutional Court in repeated rulings, in order to incorporate the autonomous constitutional bodies of the electoral system within the scope of Article 99 of the Political Constitution of the State.

In this regard, it should be borne in mind that the Constitutional Court in its Judgment in Exp. 0006-2003-AI/TC LIMA<sup>1</sup> expressed the following:

(...)

**84. Regarding the members of the Jurado Nacional de Elecciones (JNE), the Head of the Oficina Nacional de Procesos Electorales (ONPE) and the Head of the Registro Nacional de Identificación y Estado Civil.**

27. Likewise, this Collegiate observes that the members of the JNE, the Head of the ONPE and the Head of the RENIEC do not have the prerogative of impeachment, despite being public officials of the utmost importance in a democratic rule of law, having the obligation to "ensure that the votes reflect the authentic, free and spontaneous expression of the citizens, and that the scrutinies are an accurate and timely reflection of the will of the elector expressed in the ballot boxes by direct vote" (Article 176 of the Constitution). Therefore, the Constitutional Court urges the Congress of the Republic to reform Article 99 of the Constitution, including the aforementioned officials of the electoral system among those dignitaries who enjoy the privilege of impeachment, or, as the case may be, including a provision that allows the privilege of impeachment to be extended to those officials established by law, as was done in Article 183 of the 1979 Constitution.

As pointed out in Bill 3134/2017-CR<sup>2</sup> by former congressman Víctor Andrés García Belaunde, (...) *the constitutional collegiate had specified that the institutions in charge of the electoral system did not have the prerogative of impeachment, since they are dedicated to safeguarding the legitimacy of the elections that involve the transition and democratic sustenance of a State.*

It is also important to note that the Constitutional Court (TC) in its plenary session held on 23 February of this year, resolved the conflict of competence lawsuit that originated in Case 00003-2022- CC/TC<sup>3</sup>, known as the case of judicial control of the decisions of the Congress of the Republic; in which it resolved (as reported by the TC through the Press Release dated February 23, 2023):

1. By a majority of 5 votes, declare the action brought by the Congress of the Republic against the Judiciary to be FOUNDED; consequently, annul the decisions issued in the amparo proceedings which prevented the procedure for the appointment of the Ombudsman from continuing.
2. By a majority of 5 votes, declare the jurisdictional claim brought by the Congress of the Republic against the Judiciary to be FOUNDED; consequently, the resolutions issued in the amparo proceedings that prevented parliamentary investigations into matters of public interest to be null and void.
3. Unanimously, to declare as SUSTAINED the claim for jurisdiction brought by the Congress of the Republic against the Judiciary; consequently, to declare null and void the resolutions

<sup>1</sup> EXP. 0006-2003-AI/TC LIMA. <https://www.tc.gob.pe/jurisprudencia/2003/00006-2003-AI.pdf>

<sup>2</sup><https://www.leyes.congreso.gob.pe/Documentos/20126021/ProyectosdeLevdeResolucionesLegislativas/PL0313420180723.PDF>

<sup>3</sup> CONSTITUTIONAL COURT RESOLVED THE CONFLICT OF COMPETENCES BROUGHT BY THE CONGRESS OF THE REPUBLIC AGAINST THE JUDICIARY REPUBLIC AGAINST THE JUDICIARY TO THE CC

issued in the amparo proceedings that prevented the application of the reform to the board of directors of the National Superintendence of University Higher Education (Sunedu).

4. By a majority of 5 votes, the National Board of Justice should be made aware of the sentence, so that it may proceed in accordance with its powers regarding the functional behaviour of the judges who have granted amparos and precautionary measures on the exclusive political competences of the Congress of the Republic.
5. **By a majority of 5 votes, EXHORT the Congress of the Republic to reform article 99 of the Political Constitution, as well as to reform its regulations, in order to incorporate the members of the JNE, the head of the ONPE and the head of the RENIEC.**

As can be seen from point 5, the Constitutional Court once again urges the Congress of the Republic to amend Article 99 of the Political Constitution, as well as the Rules of Procedure of the Congress, in order to include the members of the JNE, the head of the ONPE and the head of the RENIEC, within the scope of the aforementioned rules regarding the accusation of infringement of the Constitution.

It is therefore necessary for Congress to implement this exhortation in order to strengthen the democratic regime and the rule of law.

It is appropriate to take up what the 1979 Constitution<sup>4</sup>, established in Article 183 and which is mentioned in the aforementioned TC ruling in Exp. 0006-2003-AI/TC LIMA, which made it possible to indict all high-ranking officials of the Republic, as follows:

***Article 183.*** *It is incumbent upon the Chamber of Deputies to accuse before the Senate the President of the Republic, or the members of both Chambers, those who /The Constitution of the Republic shall not be invoked against Ministers of State, members of the Supreme Court of Justice and of the Constitutional Guarantees Court and the senior officials of the Republic specified in the Law, for infringement of the Constitution and for any offence committed by them in the exercise of their functions, even if they have ceased to hold such functions.*

In this regard, this initiative provides that *"It is the responsibility of the Permanent Commission to accuse before Congress: of President of the Republic; representatives to Congress; Ministers of State; magistrates of the Constitutional Court; or members of the National Board of Justice; members of the National Jury of Elections; the Head of the National Office of Electoral Processes; ol Head of the National Registry of Identification and Civil Status; Judges of the Supreme Court; Supreme Prosecutors; the Ombudsman and the Comptroller General of the Republic, for infringement of the Constitution and for any offence they commit in the exercise of their functions and for up to five years after they have ceased to hold office"*.

It is also necessary for the Congress of the Republic to proceed to amend the Rules of Procedure of the Congress, as well as to amend the rules governing the autonomous constitutional bodies covered by this Constitutional Reform Law, in order to give effectiveness and legal certainty to the application of this law.

## II. EFFECT OF THE ENTRY INTO FORCE OF THE RULE ON NATIONAL LAW

The purpose of this Bill is to amend Article 99 of the Political Constitution of Peru.

The following comparative table details the amendments proposed to the Political Constitution of Peru, through the legislative initiative:

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<sup>4</sup> <https://www4.congreso.eob.pe/comisiones/1999/simplificacion/const/1979.htm>

<b>CURRENT CONSTITUTIONAL TEXT</b>	<b>PROPOSED TEXT</b>
<b>Accusation by infringement of the Constitution</b>	<b>Accusation by infringement of the Constitution</b>
Article 99. National Council of the Judiciary; to the members of the Supreme Court; to the Supreme Prosecutors; to the Ombudsman and the Comptroller General for infringement of the Constitution and for any offence committed by them in the exercise of their functions and for up to five years after they have ceased to hold office.	Article 99. Correspond to the Standing Committee to charge the Congress; to President of at Republic; to the representatives of the Congress; to Ministers of State; to The magistrates of the Court Constitutional; to the members of the National Justice Board; to the members of the National Jury of Elections; the Head of the National Office of Electoral Processes; the Head of the National Registry of Identification and Civil Status; Supreme Court Judges; Supreme Prosecutors; the Ombudsman and the Comptroller General of the Republic, for infringement of the Constitution and for any crime they commit in the exercise of their duties. and up to five years after they have ceased to hold office.

### III. COST-BENEFIT ANALYSIS

This draft law does not represent a major expense for the state, it implements political control over constitutionally autonomous bodies that are the repository of the legitimacy of the democratic transition in elections.

Likewise, it complies with implementing the exhortation made by the Constitutional Court through the judgments in files 0006- 2003-AI/TC and 00003-2022-CC/TC, known as the case of the judicial control of the decisions of the Congress of the Republic.

### IV. LEGISLATIVE HISTORY

This initiative takes up the content of draft Law 3134/2017-CR of the former congressman Victor Andrés García Belaunde of the Acción Popular Parliamentary Group, parliamentary period 2016-2021, which proposes the Law of constitutional reform that modifies article 99 of the Political Constitution of Peru, from which information has been extracted and is included in the expository part of the present draft.

### V. LINKING WITH THE NATIONAL AGREEMENT AND THE LEGISLATIVE AGENDA

This legislative proposal is linked to the following National Accord State Policies:

#### I. Democracy and the rule of law:

1. Strengthening the democratic regime and the rule of law.

#### IV. Efficient, Transparent and Decentralised State:

24. Affirmation of an efficient and transparent state.

This Bill is part of the Legislative Agenda for the 2021-2022 Annual Session, approved by Legislative Resolution of Congress 002-2021-2022-CR, in relation to the State Policies of the National Agreement, such as:

**1. STRENGTHENING DEMOCRACY AND THE RULE OF LAW**

1. Defence of the constitutional principle of checks and balances.
2. Strengthening legal certainty and institutionality

**II. 4347/2022-CR - CONSTITUTIONAL REFORMS PROJECT OF CONSTITUTIONAL REFORM AMENDING ARTICLES 39 AND 99 OF THE POLITICAL CONSTITUTION OF PERU.**

The undersigned members of the parliamentary group AVANZA PAIS, at the initiative of Congresswoman **Rosselli Amuruz Dulanto**, exercising the right conferred by Article 107 of the Political Constitution of the State, in accordance with Articles 75 and 76 of the Regulations of the Congress of the Republic, present the following draft law:

**LEGAL FORMULA**

The Congress of the Republic has passed the following law:

**DRAFT CONSTITUTIONAL REFORM AMENDING ARTICLES 39 and 99 OF THE POLITICAL CONSTITUTION OF PERU.**

**Article 1.- Object of the present Law.**

The purpose of this Law is to amend articles 39 and 99 of the Political Constitution of Peru, in order to introduce the members of the plenary of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status as high-ranking officials in the State.

**Article 2.- Amendments**

Amend Articles 39 and 99 of the Political Constitution of Peru.

**Article 39.-** All civil servants and public workers are at the service of the Nation. The President of the Republic has the highest rank in the service of the Nation and, in that order, the representatives to Congress, ministers of State, members of the Constitutional Court, of the **National Board of Justice**, supreme magistrates, the Public Prosecutor of the Nation, the Ombudsman, the members of the plenary of the National Jury of Elections, **the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status**, in the same category; and the representatives of decentralised bodies and mayors, in accordance with law.

**Article 99.-** It is incumbent upon the Standing Committee to impeach before Congress: the President of the Republic; the representatives to Congress; the Ministers of State; the members of the Constitutional Court; the members of the National Council of the Judiciary; the members of the Supreme Court; the Supreme Prosecutors; the Ombudsman, the Comptroller General for infringement of the Constitution, **the members of the plenary of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status**, and for any offence they commit in the exercise of their functions and up to five years after they have ceased to hold office.

Lima, 28 February 2023

**ROSSELLI AMURUZ DULANTO**  
Congressman of the Republic



## EXPLANATORY MEMORANDUM

### I. CONSTITUTIONAL ANALYSIS AND PROBLEM STATEMENT ON THE BASIS OF THE CONCEPT OF "SENIOR OFFICIAL".

Constitutional reforms are the instrument by which either the legislator or other public entities or citizens can fill the gap in the Political Charter in order to make it more viable.

This is the case of the holders and members of the bodies of the electoral system, on whom rests the responsibility for one of the main fundamental rights of the country: the right to vote.

Both the members of the plenary of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status, constitute senior officials due to their functional and administrative relationship with the State, from the legal or administrative act of their appointments or elections.

In the case of the members of the NEB, we can find it in Law No. 28212, *"Law that develops Article 39 of the Political Constitution with regard to the hierarchy and remuneration of senior officials and authorities of the State"*, making a distinction between senior officials with national hierarchy and senior officials with regional or local hierarchies; Indeed, **the members of the NEB are considered as high officials and authorities of the State**, as indicated in Article 2 (h) of the aforementioned law, and in this respect, the legislator, developing the constitutional precept, has filled a gap in order to provide a solution to the remuneration of "high officials".

On the other hand, in accordance with Article 13 of Law No. 26486, Organic Law of the National Jury of Elections, **the members of the National Jury of Elections enjoy, during the exercise of their functions, the same honours and pre-eminence as the Supreme Judges**, and the rules on responsibilities and sanctions foreseen for the latter are applicable to them.

The debate in academia and in the political forum itself has always been whether the president of the JNE can be subject to Constitutional Impeachment<sup>5</sup>, in the cases of the accusations against the former presidents of the JNE, Alipio Montes de Oca, Luis Serpa Segura and Víctor Raúl Castillo Castillo; In fact, there have been recent precedents of accusations that have been positively qualified and shelved for lacking the principle of legal typicity, as they do not fall within the prerogatives of impeachment contemplated in Article 99 of the Constitution<sup>6</sup>. The latter case has been the subject of a judgement in first instance by a Constitutional Judge of Arequipa, declaring an amparo application to be well founded, stating that ".....The Constitutional Court of Arequipa declared a petition for amparo to be well founded, stating that *"threatens the fundamental right of the appellant to the full exercise of his public function, since the processing of these constitutional complaints is intended to subject him to the prerogative of impeachment and impeachment which does not correspond to him according to the express text of Article 99 of the Constitution, which, taking into account the context of public campaigns against him from various social and political sectors, constitutes interference in the exercise of his functions, with the threat of being dismissed or disqualified from exercising public functions for up to ten years, and that he will not be able to perform his duties in the exercise of his functions (10) years; all of which is an attack against the exercise of the public function in the position of President of the National Jury of Elections, which should be carried out by the beneficiary of the process. The processing by the Congress of the Republic of constitutional complaints against the appellant, although it has no powers to do so, and in relation to decisions issued in the field of the*

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<sup>5</sup> file:///C:/Users/gcastror/Downloads/OVER%20P "20CONSTITUTUCIONALP "X "20A%"20PRESIDENTS'X "20From'X "20JNE'X "20(2).pdf

<sup>6</sup> Constitutional Complaint 107 against Dr. José Luis Salas Arenas, which was filed because the president of the JNE was not within the prerogatives of impeachment referred to in article 99 of the Political Constitution

*administration of electoral justice, has an intimidating effect and, therefore, is a threat to the right to independence in the administration of electoral justice of the beneficiary of the process."*<sup>7</sup>

However, Dr. César San Martín Castro himself, in his capacity as president of the Judiciary. César San Martín Castro himself, in his capacity as President of the Judiciary, in draft law 4646/2010-PJ of 27 January 2011, approved by the Plenary Chamber of the Supreme Court of Justice of the Republic so that the members of the Executive Council would be full-time, and prior to the technical opinions of the same bodies of the justice system, This led to the opinion of the Justice and Human Rights Commission, which stated that **"the fact is that the status of magistrate of the Judicial Power or Judge of the Judicial Power cannot be lost or diminished by the fact of having been chosen as a representative before another entity, especially if this appointment should not mean a reduction in their prerogatives and rights, but on the contrary, a merit. Representation in other entities implies the quality of institutional spokesperson and therefore it is not possible to detach them from their main function, which is to be members of the Supreme Court, the membership as members of the Supreme Court, keeps the Supreme Judges, elected for other entities, closely linked to the source of representation"**.<sup>8</sup>

In other words, by modifying Article 29 of the Single Ordered Text of the Organic Law of the Judiciary, approved by Supreme Decree No. 017-93-JUS, it is stated that, among the twenty members of the Supreme Court of Justice of the Republic, a Supreme Court Justice representing the Supreme Court before the National Jury of Elections, with the same prerogatives, which is a merit, unlike what the current president of the National Jury of Elections is seeking.

In the case of the Head of ONPE, we must specify that in accordance with Article 8 of Law No. 26487, Organic Law of the National Office of Electoral Processes, in accordance with Article 182 of the Political Constitution of Peru, his position is subject to the following conditions same incompatibilities as foreseen for the members of the Plenary of the Jury, National Election Commission.

The Head of RENIEC, in accordance with Law No. 26497, *Organic Law of the National Registry of Identification and Civil Status*, in accordance with Article 183 of the Political Constitution of Peru, **is subject to the same incompatibilities foreseen for the members of the Plenary of the National Jury of Elections**, The performance of his office is incompatible with any other public function, **except for part-time teaching, and he exercises in a collegial manner, together with the President of the National Jury of Elections and the Head of the National Office of Electoral Processes, the ownership of the budget of the Electoral System**.

Indeed, it is important to highlight that the role of the members of the plenary of the JNE, the Head of ONPE and the Head of RENIEC, in accordance with the Political Constitution of Peru, constitute the bodies of the electoral system in charge of the most precious fundamental right of democracy, having as their basic functions the planning, organisation and execution of the electoral processes or referendum or other popular consultations; ensuring the pristine result of the authentic, free and spontaneous expression of the citizens, and that the scrutines are an accurate and timely reflection of the popular will expressed at the ballot box by direct voting, on which the development of the nation rests. For this reason, the members of the plenary of the JNE, the Head of ONPE and the Head of RENIEC, in accordance with their sacred mission and the aforementioned legislation, constitute "high officials".

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<sup>7</sup> Exp. N° 00400-2022-0-0401-JR-DC-01, First Constitutional Court of Arequipa, Sentence N° 437-2022 of 26 July 2022.

<sup>8</sup> Opinion in PL 4646/2010-PJ, which, after being approved by the full Congress, was published as Law No. 29755, "Law that establishes that the members of the Executive Council of the Judiciary exercise their functions on a full-time basis same incompatibilities as foreseen for the members of the Plenary of the Jury.

## II. EFFECT OF THE STANDARD ON NATIONAL LAW

Although Article 39 of the Political Constitution of Peru establishes that all public officials are at the service of the nation, it is also true when it indicates the hierarchy of this function, starting with the President of the Republic, followed by the members of the Congress of the Republic, then the Ministers of State, and so on to the heads of the autonomous constitutional bodies. In this sense, it is clear that the members of the plenary of the JNE, the Head of the ONPE and the Head of the RENIEC, being "senior officials", form part of the hierarchy referred to in the aforementioned constitutional provision.

On the other hand, the Constitutional Court, in its ruling in Exp. 0003-2022- CC/TC, has urged the Congress of the Republic **to reform article 99 of the Political Constitution, as well as to reform its regulations, to incorporate the members of the JNE, the head of the ONPE and the head of the RENIEC<sup>9</sup>**, which constitutes an important source for adopting the political agreement in order to fill this regulatory vacuum.

To complement the above-mentioned norms, for the purpose of organising the state and protecting the democratic order, we describe in the attached box the normative proposal, with the following formula:

ORIGINAL TEXT OF ARTS. 39 AND 99 OF THE CONSTITUTION	PROPOSAL FOR AMENDMENT OF ARTS. 39 AND 99 OF THE CONSTITUTION
<p><b>Article 39.-</b> All civil servants and public workers are at the service of the Nation. The President of the Republic has the highest rank in the service of the Nation and, in that order, the representatives to Congress, ministers of State, members of the Constitutional Court and of the Council of the Judiciary, supreme magistrates, the Public Prosecutor and the Ombudsman, in the same category; and the representatives of decentralised bodies and mayors, in accordance with the law.</p> <p><b>Article 99.-</b> The Standing Committee shall be responsible for accusing before Congress: the President of the Republic; representatives to Congress; Ministers of State; members of the Constitutional Court; members of the National Council of the Judiciary; members of the Supreme Court; supreme prosecutors; the Ombudsman and the Comptroller General for infringement of the Constitution and for any offence they commit in the exercise of their functions and for up to five years after they have ceased to hold office.</p>	<p><b>Article 39.-</b> All civil servants and public workers are at the service of the Nation. The President of the Republic has the highest rank in the service of the Nation and, in that order, the representatives to Congress, ministers of State, members of the Constitutional Court, members of the National Board of Justice, supreme magistrates, the Attorney General of the Nation, the Ombudsman, members of the plenary of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status, in the same category; and the representatives of decentralised bodies and mayors, in accordance with the law.</p> <p><b>Article 99.-</b> It is incumbent upon the Standing Committee to impeach before Congress: the President of the Republic; the representatives to Congress; the Ministers of State; the members of the Constitutional Court; the members of the National Council of the Judiciary; the members of the Supreme Court; the Supreme Prosecutors; the Ombudsman, the Comptroller General for infringement of the Constitution, the members of the plenary of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of</p>

<sup>9</sup><https://www.tc.gob.pe/institucional/notas-de-prensa/tribunal-constitucional-resolvio-el-conflicto-de-competencias-interposed-by-the-congress-of-the-republic-against-the-judiciary>

	Identification and Civil Status, and for any offence they commit in the exercise of their functions and up to five years after they have ceased to hold office.
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### III. COST-BENEFIT ANALYSIS

The policy proposal does not generate expenditure for the national exchequer. On the contrary, it builds a great benefit in the administration of public affairs.

It is important to highlight that during the validity of the 1993 Constitution, the Congress of the Republic has made an effort to maintain vigilance in the acts derived in the exercise of the function of the holders of the organs of the electoral system, and as has been explained in the present explanatory memorandum, in some cases constitutional complaints have been approved and in others not, generating not only a problem. Rather, it is an economic damage to an inalienable power of the first power of the State: political control, which has been elucidated by the Constitutional Court as the highest interpreter of Fundamental Rights.

The proposal has an impact on the sacred mission exercised by the holders of the bodies of the electoral system, whose functions are closely linked to the right to vote and therefore to the democratic system, a fundamental indicator for the development of the nation. It is important the role they play in the legitimacy of origin of the popularly elected authorities, and this builds indicators in our economy, in such a way that the proposed norm elevates the commitment to build a more democratic country.

### IV. LINKAGE WITH THE NATIONAL AGREEMENT

This proposal is directly linked to the First State Policy approved within the National Agreement. In such a way that **"Strengthening the democratic regime and the rule of law"**, of all Peruvians has obliged us as a State to declare that:

*'We commit ourselves to consolidate the democratic regime and the rule of law to ensure a climate of stability and political co-operation, to promote ensure a climate of stability and political co-operation, promote democratic competition and guarantee free and competition and guarantee free and transparent elections, pluralism and alternation of power. power. We declare that representative democracy is the basis for the organisation of the rule of law, which is strengthened and deepened by permanent citizen participation, and responsible citizen participation, within the framework of constitutionality.*

*To this end, the State shall: a) uphold the rule of the Constitution by ensuring its functioning as a unitary and decentralised constitutional state, under the principles of independence, pluralism of independence, pluralism, balance of powers and others that comprise it; (b) guarantee respect for the ideas, political guarantee respect for ideas, political organisations and other civil society organisations, and ensure that fundamental guarantees and freedoms are safeguarded, bearing in mind that the individual and society are the end the individual and society are the supreme purpose of the State; (c) encourage the affirmation of a democratic culture that promotes a citizenry aware of its rights and duties; and d) establish norms that sanction those who violate or collaborate in the violation of the constitutionality, fundamental rights and legality".*

**III. 4435/2022-CR - CONSTITUTIONAL REFORM BILL THAT MODIFIES ARTICLE 99 OF THE POLITICAL CONSTITUTION OF PERU AND INCORPORATES THE MEMBERS OF THE NATIONAL JURY OF ELECTIONS, THE HEAD OF THE NATIONAL OFFICE OF ELECTORAL PROCESSES AND THE HEAD OF THE NATIONAL REGISTRY OF IDENTIFICATION AND CIVIL STATUS TO THE PROCEDURE OF CONSTITUTIONAL ACCUSATION BY IMPEACHMENT.**

The undersigned members of the Parliamentary Group of ACCIÓN POPULAR at the initiative of Congressman **ELVIS HERNÁN VERGARA MENDOZA**, in exercise of the right of initiative in the formation of laws conferred by Article 107 of the Political Constitution and Articles 22, paragraph c), 67, 75 and 76 of the Regulations of the Congress of the Republic; propose the following:

**LEGAL FORMULA**

The Congress of the Republic  
Has given the following Law:

**DRAFT CONSTITUTIONAL REFORM BILL AMENDING ARTICLE 99 OF THE POLITICAL CONSTITUTION OF PERU OF THE POLITICAL CONSTITUTION OF PERU AND INCORPORATING THE MEMBERS OF THE NATIONAL NATIONAL ELECTION JURY, THE HEAD OF THE NATIONAL OFFICE OF ELECTORAL PROCESSES AND THE HEAD OF THE NATIONAL ELECTORAL PROCESSES AND THE HEAD OF THE NATIONAL REGISTRY OF IDENTIFICATION AND CIVIL STATUS TO THE CIVIL STATUS TO THE PROCEDURE OF CONSTITUTIONAL IMPEACHMENT BY IMPEACHMENT**

**Article 1.- Amendment of Article 99**

Article 99 of the Political Constitution of Peru is hereby amended as follows:

**Article 99.- Accusation Constitution**

It is for the Permanent Commission to impeach before the Congress: the President of the Republic; the representatives to Congress; the Ministers of State; the members of the Constitutional Court; the members of the **National Board of Justice**; the members of the Supreme Court; the Supreme Prosecutors; the Ombudsman and the Comptroller General for infringement of the Constitution and for any offence committed by them in the exercise of their functions and up to five years after they have ceased to hold them; **members of the National Jury of Elections, the head of the National Office of Electoral Processes and the head of the National Registry of Identification and Civil Status shall be charged for any offence committed by them in the exercise of their functions and for up to five years after they have ceased to hold office.**

Lima, February 2023

**EXPLANATORY MEMORANDUM**

**I. BACKGROUND**

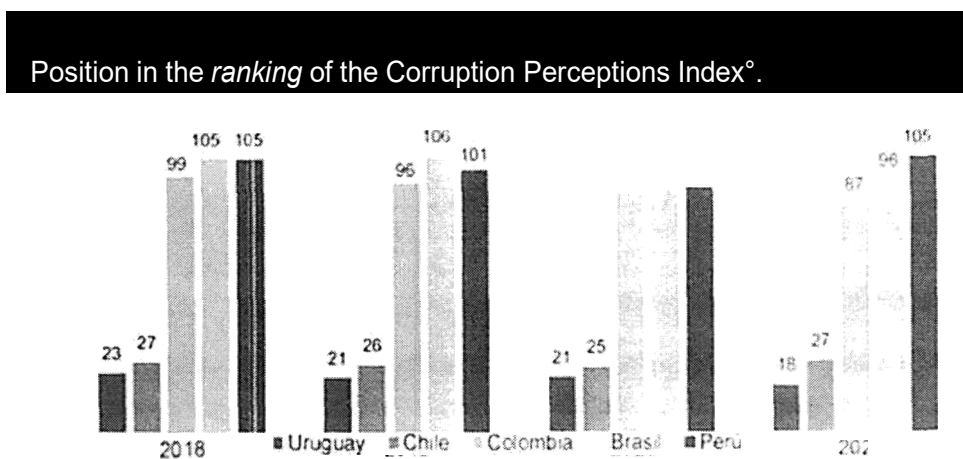
The purpose of this bill is to establish a constitutional and legal mechanism to control the normal functioning of the competences that have been conferred to the public officials included in the present reform; among them would be included the members of the National Board of Justice, members of the National Jury of Elections, the head of the National Office of Electoral Processes and the head of the National Registry of Identification and Civil Status, until 5 years after the end of their functions. It is important to mention that this initiative strengthens the constitutional order and will guarantee the effective fulfilment of democratic values. It is widely known that a large number of public officials who have held high positions have been directly or indirectly involved in investigations into cases of crimes against the public administration.

The functions of parliament in a state governed by the rule of law are to legislate, to represent and to control; therefore, it is necessary to exercise adequate and legitimate oversight in relation to the accusations in accordance with its interests within the constitutional, legal and current framework.

Therefore, it is extremely important to incorporate the public officials in question in Article 99 of the Political Constitution of Peru, as well as to highlight the responsibility of Congress to review and constantly update the legislation in accordance with political and social needs.

According to the Peruvian Society of Foreign Trade (2022), our country is classified as having a very high level of corruption compared to other countries in the region. This association mentions that this is due to impunity and the increase of political instability in a structural way.

**Table 1: Corruption Perceptions Index 2021.**



**Source: Peruvian Foreign Trade Society.**

As mentioned above, and as can be seen in Table 1, Peru is one of the countries with the highest corruption rates in Latin America.

On the other hand, it is estimated that between 2019 and 2020, an economic damage of S/. 23,397 million and S/. 22,059 million, respectively, was caused due to acts of corruption and

functional misconduct in the public administration. Likewise, in 2021, the figure rose to S/ 24,262,964,827, according to the Corruption Index 2021, revealed by Nelson Shack Yalta, Comptroller General of the Republic. This type of report is a good example of the levels of corruption, as it helps to create programmes, generate public policies and other measures to combat acts against the public administration.

It is necessary to specify the damage caused by corruption and its impact on the legitimacy of institutions in recent years. It is therefore necessary to implement and promote reforms that contribute to, ensure and strengthen governance.

- **ON THE CONSTITUTIONAL CHARGE**

The institutions of impeachment and impeachment are recognised in articles 99 and 100 of the Political Constitution of Peru, respectively; these are as follows:

"Article 99.- Indictment for infringement of the Constitution

It is incumbent upon the Permanent Commission to accuse before Congress: the President of the Republic; representatives to Congress; Ministers of State; members of the Constitutional Court; members of the National Council of the Judiciary; members of the Supreme Court; Supreme Prosecutors; the Ombudsman and the Comptroller General for infringement of the Constitution and for any offence they commit in the exercise of their functions and up to five years after they have ceased to hold office".

"Article 100.- Constitutional Trial

It is for the Congress, without the participation of the Standing Committee, to suspend or not to suspend the accused official or to disqualify him or her from public office for up to ten years, or to disqualify him or her from any other responsibility.

The accused has the right, in this procedure, to defend himself and with the assistance of counsel before the Standing Committee and before the Plenary of Congress.

In the event of an accusatory decision with criminal content, the Public Prosecutor files a complaint with the Supreme Court within five days. The Vocal Supremo Penal opens the corresponding investigation.

The acquittal of the Supreme Court returns the accused to his political rights.

The terms of the prosecutor's accusation and of the preliminary investigation may not exceed or reduce the terms of the congressional indictment".

Both constitutional provisions systematically regulate the prerogatives described above.<sup>10</sup>

- **ON IMPEACHMENT**

Impeachment is a functional prerogative enjoyed by certain State officials, with the purpose of preventing them from being prosecuted for crimes committed in the exercise of their functions, without prior proceedings with the due process guarantees before the Congress of the Republic.<sup>11</sup>

- **ON IMPEACHMENT**

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<sup>10</sup> This statement coincides with the criterion adopted by the Constitutional Court in STC N° 006-2003-AI/TC

<sup>11</sup> STC N° 006-2003-AI/TC; f.j. 3, fifth paragraph.

The impeachment process allows the initiation of parliamentary proceedings against the officials listed in Article 99 of the Political Constitution of Peru, due to constitutional infractions of a political nature committed by them in the exercise of their functions; in this sense, if the responsibility of the official is determined, the Congress of the Republic itself is authorised to sanction him/her and even disqualify him/her from the exercise of the public function.

- **CONSTITUTIONAL PROCEDURES OF ACCUSATION**

According to Dr. César Delgado Guembes, constitutional impeachment is a special parliamentary procedure, the purpose of which is to determine the possible responsibilities that may have been incurred by a high-ranking State official, who is accused of committing crimes committed in the exercise of his or her functions, or for the constitutional infringement in which he or she may have been involved during his or her term of office, or for the constitutional infringement in which he or she may have been involved in the exercise of his or her functions, holding one of the offices set out in Article 99 of the Constitution Política of Perú. In this sense, the constitutional impeachment procedure becomes the ideal procedural channel through which the impeachment or impeachment trial is carried out, depending on the accusation that is made.

- **ON THE JUDGEMENT OF THE CONSTITUTIONAL COURT OF THE 2003 YEAR**

On 1 December 2003, the Constitutional Court ruled on the issue of impeachment and impeachment, calling on the Congress, among other things, to and impeachment, urging the Congress of the Republic, among other things, the constitutional reform of article 99 of the Constitution and the amendment of the Rules of Procedure of the Congress, in order to incorporate the Heads of the ONPE and RENIEC, respectively, as well as the members of the JNE.

The Court's recommendation focuses on the relevance in electoral matters of these high public offices in the framework of a democratic State under the rule of law, and it should be considered imperative to ensure that the electoral process is legitimate, transparent and organised, as well as to ensure that the will of the citizens is expressed and represented democratically through the ballot.

The 27th argument of the Constitutional Court was given as follows:

"27.Likewise, this Collegiate observes that the members of the JNE, the Head of the ONPE and the Head of the RENIEC do not have the prerogative of the political immunity. It does not hinder them from being public officials of the utmost importance in a democratic rule of law, having the obligation to 'ensure that the votes reflect the authentic, free and spontaneous expression of the citizens, and that the scrutines are an accurate and honest reflection of the will of the electorate expressed in the ballot box by direct vote' (Article 176 of the Constitution). 9'Therefore, the Constitutional Court urges the Congress of the Republic to reform Article 99 of the Constitution, including the aforementioned officials of the electoral system among those dignitaries who enjoy the privilege of impeachment, or, as the case may be, including a provision that allows for the extension of the privilege of impeachment to those officials who the law The Constitution of 1979, Article 183 of the Constitution of 1979."

It is extremely important to carry out this constitutional reform, as well as the respective modification of the Rules of Procedure of Congress, since by including the aforementioned founders, they will be able to enjoy the right to a constitutional precedent, and it is the obligation of Congress to guarantee the adequate and normal functioning of the competences that are proper to their position, as well as to sanction and even disqualify those officials who fail to fulfil their duties and incur in infractions or crimes.



- **ON THE PRONOUNCEMENT OF THE CONSTITUTIONAL COURT OF 2023**

On 23 February of this year, the Constitutional Court ruled on the competence claim that originated in Case 00003-2022-CC/TC. In this pronouncement, as mentioned above, it resolved and exhorted the Congress of the Republic, with a majority of 5 votes, to modify article 99 of the Constitution, as well as its regulation, in order to incorporate the members of the JNE, the head of the ONPE and the head of the RENIEC.

Likewise, in the words of Judge Gustavo Gutierrez Ticse, current member of the Constitutional Court, he stated that the officials referred to in the article, as well as those proposed for incorporation and even the judges of the institution he represents, could be subjected to a trial or impeachment before the Congress of the Republic, since it is the power of the State responsible for overseeing and responding in the event that fundamental rights are violated, the constitution itself or an alleged criminal act has been committed and therefore, they are subject to these mechanisms of control.

The political control exercised by the Congress of the Republic in relation to the current proposal for constitutional reform will contribute to the electoral system and to our legal framework in general, ensuring effective compliance of democratic values and will help to reduce the rate of crimes against public administration.

## **II. LEGAL FRAMEWORK**

- a. Political Constitution of Peru
- b. Rules of Procedure of the Congress of the Republic

## **III. EFFECT OF THE ENTRY INTO FORCE OF THE STANDARD ON NATIONAL LAW**

The present law does not violate national law, as it incorporates the heads of the main electoral bodies to be constitutionally charged for any offence they commit during their term of office and up to five years after their term of office.

## **IV. COST-BENEFIT ANALYSIS**

The present Bill n 9 is a legislative initiative of constitutional reform that seeks to incorporate the heads of the main electoral bodies to be charged constitutionally for any offence they commit in the exercise of their functions and for up to five years after they have ceased to hold office.

## **V. LINKAGE WITH THE LEGISLATIVE AGENDA AND THE NATIONAL AGREEMENT**

In relation to the legislative agenda approved for 2022-2023, Objective I on Democracy and the Rule of Law is fulfilled, in relation to the state policy on strengthening the democratic regime and the rule of law through the issue of constitutional reforms.

Regarding the link with the National Agreement, the proposal is framed within the First State Policy on Democracy and the Rule of Law. It is also framed within objective one on the strengthening of the democratic regime and the Rule of law.

#### **IV. 4495/2022-CR – DRAFT CONSTITUTIONAL REFORM BILL AMENDING ARTICLE 99 OF THE CONSTITUTION**

The undersigned Congressman of the Republic, ALEJANDRO SOTO REYES, member of the parliamentary group ALIANZA PARA EL PROGRESO, in exercise of the right of legislative initiative conferred by Article 107 of the Political Constitution of Peru, and in accordance with Articles 75 and 76 of the Regulations of the Congress of the Republic, presents the following BILL:

#### **LEGAL FORMULA**

#### **CONSTITUTIONAL AMENDMENT ACT AMENDING ARTICLE 99 OF THE CONSTITUTION**

**Article 1.** Amendment of Article 99 of the Political Constitution of Peru Article 99 of the Political Constitution of Peru is amended and shall be worded as follows:

It is the responsibility of the Standing Committee to impeach before the Congress: the President of the Republic; the representatives of the Ministers of State; the members of the Court of Auditors; the members of the Court of Auditors; the members of the Court of Auditors; the members of the Court of Auditors; the members of the Court of Auditors; the members of the Court of Auditors; the members of the Court of Auditors; the members of the National Council of the Judiciary; members of the Supreme Court; supreme prosecutors; to the Ombudsman of the Village; the Comptroller General; **to the members of the National Jury of Elections; the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status;** by violation of the Constitution and for any crime committed in the exercise of the of their functions and up to five years after they have ceased to hold office. these."

Lima, 14 March 2023

## EXPLANATORY MEMORANDUM

### I. RATIONALE FOR THE PROPOSAL

Article 99 of the Constitution provides as follows:

**"Article 99.** It is incumbent upon the Standing Committee to accuse before Congress: the President of the Republic; representatives to Congress; Ministers of State; members of the Constitutional Court; members of the National Council of the Judiciary; members of the Supreme Court; supreme prosecutors; the Ombudsman and the Comptroller General for infringement of the Constitution and for any offence they commit in the exercise of their functions and for up to five years after they have ceased to hold them".

This text includes the concept of impeachment directed at high-level authorities in order to guarantee the good management of the state.

However, the Constitutional Court has pointed out that the list established in Article 99 is incomplete as the members of the National Jury of Elections, the head of the National Office of Electoral Processes and the head of the National Registry of Identification and Civil Status have been excluded.

In the Constitutional Court's ruling in case 00003- 2022-PCC/TC, the following has been stated:

"100. In any case, the assessment made by the Congress of the Republic regarding the possibility of carrying out impeachment and impeachment proceedings against the Supreme Court magistrate who exercises the role of representative in the NEC and, therefore, of its president, is not without foundation, as can be seen in Article 179, paragraph 1 of the 1993 Constitution analysed above.

101. In this regard, this High Court understands that the competence to carry out the impeachment and impeachment trial presupposes not only the final determination of the responsibility of the official, but also the scope of the representation exercised by the magistrate of the Supreme Court of Justice of the Republic who presides over the JNE by constitutional mandate. Consequently, when the Judiciary decides in the amparo proceedings that "The Congress of the Republic is not empowered to process constitutional complaints against the President of the National Jury of Elections" (numeral 4.1 page 484 of the digital booklet), it is exercising its competence by supplanting the power that corresponds to the Congress of the Republic.

102. As is evident, in the aforementioned judgment, the effectiveness or otherwise of a fundamental right is not being assessed, but rather a decision is being made on whether or not a fundamental right has been violated.

The admissibility or inappropriateness of constitutional accusations whose processing corresponds to the Congress of the Republic.

103. The purpose of political control, which, strictly speaking, is the control of those in power, is thus left empty. Professor Diez Picazo includes this type of conduct as part of the so-called "governmental criminality", due to the fact that the phenomenon of criminal conduct by those in power gives rise to a legal and political problem with its own characteristics. In many cases, rather than a criminal reproach, it is an institutional one.

104. In this sense, removing the president of the JNE from the political control of his activity as such - being the person who personifies this constitutional body of the State and, therefore, of the entire electoral system as a whole - is an act of impunity incompatible with the constitutional rule of law, which also contravenes the horizontal nature that the public authorities should have among themselves, within a constitutional democracy.

105. This is why the Constitutional Court itself - in 2012 - noted the need to update the 1993 Political Constitution to formalise political control, not only in the case of the president of the JNE, but also for the members of the Plenary and the heads of the Onpe and Reniec. Thus, in the ruling in Case 00156-2012-PHC/TC, the following was held:

(...) the Constitutional Court urges the Congress of the Republic to reform article 99 of the Constitution, including the aforementioned officials of the electoral system among those dignitaries who enjoy the privilege of impeachment, or, as the case may be, including a provision that allows the privilege of impeachment to be extended to those officials that the law establishes, as was done in article 183 of the 1979 Constitution.

106. As can be observed, this Court has noted an omission in our Fundamental Text and has expressed that the derived constituent must opt for a reform to incorporate the high officials of the electoral system.

107. However, the subjection of the president of the NEC to political control cannot be justified by the aforementioned formalism, given that the head of the three bodies that make up the electoral system is precisely this high official. This is because he is a judge of the Supreme Court. The president of the NEC is not elected from among its members; this is an exclusive position that falls to the supreme judge appointed as the representative of the Judiciary before the NEC, and as such he has the prerogative-duty of impeachment and impeachment.

108. In this sense, and without prejudice to the reform, the president of the NEB, as a judge of the Supreme Court of Justice of the Republic, is subject to political control like any other of the dignitaries listed in Article 99 of the 1993 Political Constitution, with the guarantees of due process in trial and impeachment proceedings, as well as in investigations by investigative commissions, in the public interest".

It is clear from these arguments that the Constitutional Court has repeatedly called on Congress to regulate the status of the bodies of the Electoral System.

The Constitutional Court has therefore ruled as follows in the aforementioned decision:

"5. **TO REITERATE THE EXHORTATION** made to the Congress of the Republic - in the judgment handed down in Case 00156-2012- PHC/TC - to reform Article 99 of the 1993 Political Constitution, as well as to reform its Regulations, in accordance with the present judgment and the jurisprudence of the Constitutional Court."

In view of the fact that the rulings of the Constitutional Court are binding on all branches of government, it is proposed to amend Article 99 of the Constitution to include the members of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status.

## II. EFFECTS OF THE ENTRY INTO FORCE OF THE STANDARD ON NATIONAL LEGISLATION

This proposal amends Article 99 of the Constitution in order to incorporate the members of the National Jury of Elections, the Head of the National Office of Electoral Processes and the Head of the National Registry of Identification and Civil Status as high authorities who are entitled to the preliminary hearing established in this article.

The comparative table for Article 99 to be amended is as follows:

<b>Political Constitution of 1993 Article 99 In force</b>	<b>Political Constitution of 1993 Article 99 Proposed amendment</b>
Article 99. Corresponds to the Standing Committee to charge the Congress: to the	Article 99. Correspond to the Standing Committee to charge the Congress: to the

President of the Republic, the representatives of the Congress; the Ministers of State; the members of the Constitutional Court; the members of the National Council of the Judiciary, the justices of the Supreme Court; to the supreme prosecutors; to the Ombudsman and the Comptroller General for infringement of the Constitution and for all offence committed by them in the exercise of their duties and for up to five years after they have ceased these.	President of the Republic, the representatives of the Congress; to the Ministers of State, the members of the Constitutional Court; the members of the National Council of the Judiciary, the justices of the Supreme Court; to the supreme prosecutors; to the Ombudsman and the Comptroller General, to the Head of the National Election Office and the National Registry of Identification and Civil Status; for infringement of the Constitution and for all offence committed by them in the exercise of their term of office and until five years after they have ceased to hold office.
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**III. COST-BENEFIT ANALYSIS**

This draft law presents a cost-benefit analysis, reflected in the following:

<b>Actor</b>	<b>Benefits</b>	<b>Costs</b>
Congress	Optimisation of the figure of the of the political judgment	Not applicable
Members of the National Jury of Elections Head of the National Office of Electoral Processes. Head of the National Registry of Identification and Civil Status	They have better protection for the exercise of their functions.	Not applicable

**IV. RELATION TO THE LEGISLATIVE AGENDA AND STATE POLICIES OF THE NATIONAL AGREEMENT**

This legislative proposal is in line with State Policy on "Democracy and the Rule of Law" related to the "Strengthening of the Democratic Regime and the Rule of Law", which provides as follows:

"We commit ourselves to consolidate the democratic regime and the rule of law to ensure a climate of stability and political cooperation, promote democratic competition and guarantee free and transparent elections, pluralism and alternation in power. We declare that representative democracy is the basis of the organisation of the rule of law, which is strengthened and deepened by permanent, ethical and responsible citizen participation, within the framework of constitutionality.

To this end, the State shall: (a) defends the rule of the Constitution by ensuring its functioning as a unitary and decentralised constitutional State, under the principles of independence, pluralism, balance of powers and others that comprise it; (b) shall guarantee respect for ideas, political organisations and other organisations of civil society, and shall ensure the safeguarding of fundamental guarantees and freedoms, bearing in mind that the individual and society are the supreme purpose of the State; (c) shall encourage the formation of a democratic culture that promotes a citizenry aware of its rights and duties; and d) shall establish norms that sanction those who violate or collaborate in the violation of constitutionality, fundamental rights and legality."

This proposal is also related to State Policy on "Democracy and the Rule of Law", a draft law linked to the "Constitutional Reforms" (point 4) of the Legislative Agenda for the 2022-2023 Annual Session, approved by Congressional Legislative Resolution 002-2022-2023-CR.

**V. 4477/2022-CR - CONSTITUTIONAL REFORM THAT MODIFIES ARTICLE 99 OF THE POLITICAL CONSTITUTION OF PERU, SO THAT THE MEMBERS OF THE NATIONAL BOARD OF JUSTICE, THE NATIONAL JURY OF ELECTIONS, THE NATIONAL OFFICE OF ELECTORAL PROCESSES AND THE NATIONAL REGISTRY OF IDENTIFICATION AND CIVIL STATUS ARE SUBJECT TO POLITICAL TRIAL AND IMPEACHMENT.**

The undersigned Congressman of the Republic, **WILSON SOTO PALACIOS** and the members of the Parliamentary Group **Acción Popular**, and the other undersigned Congressmen, under the protection of the provisions of articles 107 and 206 of the Political Constitution of Peru and in accordance with articles 22, paragraph c), 75 and 76, paragraph 2) of the Regulations of the Congress of the Republic, present the following legislative initiative:

**LEGAL FORMULA.**

**CONSTITUTIONAL REFORM LAW MODIFYING ARTICLE 99 OF THE POLITICAL CONSTITUTION OF PERU SO THAT MEMBERS OF THE NATIONAL BOARD OF JUSTICE, THE NATIONAL JURY OF ELECTIONS, THE NATIONAL OFFICE OF ELECTORAL PROCESSES AND THE NATIONAL REGISTRY OF IDENTIFICATION AND CIVIL STATUS ARE SUBJECT TO IMPEACHMENT AND PRELIMINARY IMPEACHMENT.**

It has given the following Law:

**Article 1. Object of the Law**

The purpose of this law is to amend the Political Constitution of Peru, modifying article 99, so that the members of the National Justice Board, the National Jury of Elections, the National Office of Electoral Processes and the National Registry of Identification and Civil Status are subject to impeachment and impeachment.

**Article 2. Modification of Article 99 of the Political Constitution of Peru.**

Article 99 of the Political Constitution of Peru is amended as follows:

**"Article 99.** It is incumbent upon the Permanent Commission to impeach before Congress: the President of the Republic; the representatives to Congress; the Ministers of State; the members of the Constitutional Court; the justices of the Supreme Court; the supreme prosecutors; the Ombudsman; the Controller General; **the members of the National Board of Justice; members of the National Jury of Elections; the head of the National Office of Electoral Processes and the head of the National Registry of Identification and Civil Status** for infringement of the Constitution and for any offence they commit in the exercise of their functions and up to five years after they have ceased to hold them'.

**FINAL COMPLEX PROVISION**

**UNIQUE: Validity**

This Law enters into force on the day following its publication in the Official Gazette "El Peruvian".

Lima, March 2022.

## I. EXPLANATORY MEMORANDUM

The 1993 Constitution establishes in Article 99.

**Article 99.-** *The Standing Committee shall be responsible for bringing charges before Congress against the President of the Republic, representatives to Congress, Ministers of State, members of the Constitutional Court, members of the National Council of the Judiciary, members of the Supreme Court, Supreme Prosecutors, the Ombudsman and the Comptroller General for infringement of the Constitution and for any offence they commit in the exercise of their functions and for up to five years after they have ceased to hold office.*

The aforementioned article provides special protection for high-ranking public officials, who cannot be brought directly before the jurisdictional body for crimes committed in the exercise of their functions without first passing through the filter of constitutional accusation before Congress through the impeachment process, developed in the Regulations of the Congress of the Republic, which regulates its composition, stages, deadlines and other formalities that guarantee an investigation and subsequent accusation or not, based on the principle of due administrative procedure.

One of the main reasons for this is that high-ranking officials, due to the responsibility of the positions they hold, cannot be vulnerable to politically motivated criminal charges that would affect the normal performance of their duties and, on the contrary, would distract them from attending to the constant judicial and prosecutorial requirements.

Thus, among the high-ranking officials of the executive branch (President of the Republic and Ministers of State), the legislative branch (members of Congress), the judiciary (Supreme Judges) and constitutionally autonomous bodies, the highest authorities of other autonomous constitutional bodies such as the members of the National Board of Justice, the National Jury of Elections, the National Office of Electoral Processes and the National Registry of Identification and Civil Status have not been considered.

"The parliament is the popular expression of a nation, and as such it is the first power of the State; it has the high function of legislating and overseeing. In this context, it exercises various mechanisms of action to fulfil its constitutional functions. Thus, we can see that Congress approves laws, authorises the executive power to legislate via legislative decrees, verifies the constitutionality of emergency decrees, controls ministers through censure, and authorises the procedure of the highest state officials, among other forms of action. In other words, not only does it dictate the most important laws of the country, but it also controls the power levels. This control is called political control, which, it is true, has acquired full importance in the contemporary democratic state and is perhaps the most important function of today's parliamentarians.

Precisely within this range of mechanisms that form part of the so-called "political control", we find the "preliminary hearing", which, on the one hand, protects the highest officials from accusations without legal or political grounds, and on the other hand, makes criminal prosecution viable when there is merit for such purposes. That is to say, on the one hand, it exercises mechanisms for the oversight of those in power; and on the other, it establishes limits so that questioning of the authorities does not end up destroying the credibility of the state and undermining the organisation of power.

[...]

This implies that the state, in addition to guaranteeing oversight of power, must provide mechanisms that, without undermining or taking away privileges, only constitute a means of legitimate protection of its rulers. This is the basis of impeachment today.



[...]

The 1993 constitution alters the figure of the preliminary hearing by making the content of the resolution declaring that there is merit to formulate a constitutional accusation imperative, so that the Public Prosecutor's Office and the judiciary lose their margin of preliminary autonomy, and must strictly abide by the will of parliament".<sup>12</sup>

It is important that all high-ranking public officials in the executive, legislative and judicial branches of government, as well as constitutionally autonomous bodies, are subject to oversight, and if they commit criminal acts in the performance of their duties, they must first go through parliament, and if they commit constitutional infractions, they must be sanctioned accordingly.

The Constitutional Court, in its Judgment in Case No. 3593-2006-AA/TC<sup>13</sup>, in grounds 8, 9 and 10, must define the concept of constitutional infringement:

*8. In this respect, as has already been pointed out, our Constitution recognises the existence of a political trial aimed at sanctioning Constitutional infractions. That is to say, all those violations of the legal-constitutional goods established in the Constitution, which are not subject to protection and sanction - in the event of non-compliance - by any legal norm. With this, the aim is to protect the Constitution, avoiding the impunity of those who violate it by means that are not foreseen or sanctioned by law. This is so insofar as the non/maf/vo nature of the Constitution determines that infringements of its text are proscribed in all spheres, and especially in the public sphere. To this end, the Constitution itself has designed a mechanism of political sanction for the highest officials of the Republic for infringement of the Constitution.*

*Consequently, it is possible to see in our Fundamental Charter various assumptions prohibited by the Constitution which, if violated by the officials mentioned in article 99 of the Constitution, are liable to impeachment for constitutional infringement. "*

*9. In the political trial conducted by the Congress of the Republic, the Constitution itself is the normative parameter for assessing whether or not any of the high-ranking officials referred to in Article 99 of the Constitution has committed an offence against it. Indeed, the task of the Congress of the REPUBLIC is to determine, on the basis of reasonableness and proportionality, whether or not the facts denounced in a political trial constitute an infringement of the Constitution. This power has not only been conferred on the Congress of the Republic by articles 99 and 100 of the Constitution, but also by the alt/cU/a 10 2. ° paragraph 2. ° of the same supreme law which imposes on it the duty to ensure respect for the Constitution and to provide for what is appropriate to make the responsibility of the offenders effective. In the particular case of the political trial, this responsibility is none other than political. Therefore, just as in the case of a crime, the criminal judge has the task of subsuming the facts under the criminal type established in the law, in the case of the impeachment trial, the Congress of the Republic has the task of frame the facts and sketch their direct relationship with the relevant constitutional norm, in order to establish the constitutional infringement, as the case may be.*

*10. In the same sense, it should be pointed out that the Constitution itself expressly provides for the sanctions that can be imposed by the Congress of the Republic for infringement of the Constitution, being able to suspend, disqualify and dismiss the officials included in article 99 of the Constitution. But the Constitution itself has established certain parameters for the imposition of sanctions. In effect, for example, disqualification will only have a maximum duration of ten years. It is clear that under the criteria of reasonableness and proportionality and taking into account the seriousness, circumstances and other factors, the Congress of the Republic will*

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<sup>12</sup> Gutiérrez Ticse, Gustavo. Comentados a la ConsttuÓón Politca del Perú, Volume 2, 1st ed. Lima: Grijley, 2021, p. 649 - 650.

<sup>13</sup> [www.tc.gob.pe/jurisprudencia/2007103593-2006-AA.html](http://www.tc.gob.pe/jurisprudencia/2007103593-2006-AA.html)

*determine the sanction to be imposed and, if applicable, the duration of the suspension or disqualification. Therefore, the Constitutional Court finds no violation of the principle of legality.*

Likewise, the Constitutional Court, in its ruling in Case No. 00006-2003-AI/TC<sup>14</sup>, Action of Unconstitutionality, brought by 65 members of Congress against paragraph j) of Article 89 of the Rules of Procedure of the Congress of the Republic, establishes at numeral 2 (Impeachment) on the parliamentary prerogative to impeach for constitutional infringement.

*18. On the other hand, the Constitutional Court considers that the punitive function of Congress, provided for in the first paragraph of article f00° of the Constitution, cannot only be exercised in those cases in which there is a condemnatory sentence issued by the Judiciary for the functional offences committed by the officials provided for in article 99°, but also in those cases in which there are eminently political responsibilities, even when there is no crime involved. While the punitive-jurisdictional function is exclusive to the judiciary (that which can punish on the basis of "legal reason"), the political-punitive function (that which can punish on the basis of "political reason") is not. And it could not be, because it is precisely the principle of separation of powers that guarantees the absence of any political assessment in the decisions of the judiciary.*

*19. The foregoing makes it possible to affirm that the Fundamental Charter not only enshrines impeachment, but also impeachment, i.e., that which allows for the initiation of a trial in a court of law. a procedure for the officials listed in its article 99°, due to "political faults" committed in the exercise of their functions, with the aim of "withdrawing the power of those who make use of it and prevent them [...] from being reinvested with power in the future. "(Broussard Paulo. 0 impeachment. Editora Saravia. 2nd Ed. 1992. P. 77). In this respect, Bidart Campos refers that "it is called a 'political' trial [...] because it is not a criminal trial; it does not seek to punish but to remove from office, 'not to judge a fact as criminal, but a situation of government as inconvenient for the State'. (Manual de Oerec/io Constitucional argentino. Ediar., 1986. P.612).*

*20. This is the way in which the constitutional provision according to which it is permissible to prosecute the aforementioned public officials for "infringement of the Constitution" must be interpreted. And the fact is that any political misconduct committed by officials who make up the organic structure provided for in the Political Constitution dangerously compromises the proper functioning of the state apparatus. In these cases, the reason for the deprivation of the body does not originate in the commission of a crime, but in the commission of faults that diminish, to the highest degree, the trust placed in the civil servant, which must be linked to the position he or she holds.*

*21. Thus, in a political trial, the official is accused, prosecuted and, if necessary, sanctioned by the Congress itself, for single and strictly political offences.*

The parliamentary law specialist Delgado Guembes, in his Handbook of Parliament, states:

"What is a constitutional impeachment? It is a special parliamentary process/, the purpose of which is to determine the possible responsibilities that may have been incurred by a high-ranking official, who is denounced for the commission of crimes committed in the exercise of the office held, or the constitutional infringement in which he/she may have incurred during the performance of one of the offices listed in article 99 of the Constitution.

In Peruvian tradition, what is now called the process of constitutional impeachment has been called by different names. It has been known as an **antejuicio político**, and also as a political trial. It has been called **antejuicio político** because of the preliminary nature of the process of evaluation of the conduct denounced with respect to the actual jurisdictional activity that the Judicial Power must carry out after, as a result of the process, the Congress approves the ha lugar a la formación de causa, which means that in the opinion of the representatives the conduct denounced must be judicially examined because there are criminal offences among the types of

<sup>14</sup> <https://www.tc.gob.pe/jurisprudencia/2003/00006-2003-AI.pdf>

offences that is recognised by our criminal law. And it has been called a "political vice when it underlines or emphasises the eminently political type and character from the moment Congress evaluates the conduct denounced; that is, to highlight the fundamentally political nature from which the misconduct for which the high-ranking official is denounced is judged and assessed"<sup>15</sup>.

Constitutionalist M. Abraham García Chavarri<sup>16</sup> points out:

[...]

#### *2.1.- Political judgment*

*Impeachment is an institution of a clearly political nature and is carried out by an eminently political body such as the Congress or Parliament. The aims and objectives pursued by impeachment, as well as the acts that are the subject of its procedure, are therefore of an absolutely political nature. Thus, the English impeachment trial, which is similar to a criminal trial, can be distinguished from the American impeachment trial, which is unequivocally political and non-criminal in nature.*

[...]

*It has already been mentioned in the development of this paper that the objective of impeachment is to remove a public official from power (and even to prevent him from taking it again) because he harms the dignity or authority of the office he held, because he harms the dignity or authority of the office he held, because it was the most appropriate or suitable thing to do, or because it was the most politically convenient or opportune thing to do. The considerations for the political sanction (which may be suspension, dismissal or disqualification) are purely political, without it being decisive whether the reproachable conduct is criminally prosecutable or not. This special nature of impeachment means that the decisions adopted by the political body (the North American Senate, or the British House of Lords, as the case may be, to cite two examples) are unreviewable in a court of law.*

### **Ante-Constitutional Trial**

*Article 100.- It is incumbent upon Congress, without the participation of the Standing Committee, to suspend or not suspend the accused official or disqualify him or her from the exercise of public office for up to ten years, or to remove him or her from office without prejudice to any other responsibility.*

*The accused has the right, in this proceeding, to defend himself and with the assistance of lawyer before the Standing Committee and before the Plenary of Congress.*

*In the event of an accusatory decision with criminal content, the public prosecutor files a complaint with the Supreme Court within five days. The Vocal Supremo Penal opens the corresponding investigation.*

*An acquittal by the Supreme Court restores the accused's political rights. The terms of the fiscal complaint and the pre-trial order cannot exceed or reduce the terms of the congressional indictment.*

The Constitutional Court in its ruling in Case No. 0006-2003-AI/TC, of 1 December 2003, held that:

*"1. The pre-impeachment trial*

*3. The President of the Republic, members of Congress, Ministers of State, members of the Constitutional Court, members of the National Council of the Judiciary, members of the Supreme Court, Supreme Prosecutors, the Ombudsman and the Comptroller General of the Republic are beneficiaries of the privilege of impeachment (Article 99 of the Constitution).*

*By virtue of this privilege, the aforementioned public officials have the right not to be criminally prosecuted by the ordinary jurisdiction if they have not previously been subjected to a duly regulated political jurisdictional procedure before the Congress of the Republic, in which the*

<sup>15</sup> Delgado Guembes. Manual del Parlamento, Lima: Tarea Asociación Gráfica Educativa, 2012, p. 483, 485

<sup>16</sup> See: <https://www.derechocambiosocial.com/RJC/Revista14/juicio.htm>

*legislative body must have determined the verisimilitude of the facts that are the subject of the accusation, as well as their subsumption in one or more criminal type(s) of functional order(s), previously and unequivocally established by law.*<sup>17</sup>

*"The pre-trial process seeks to lift the immunity or functional prerogative of a high-ranking official for probable crimes committed in the exercise of his or her functions. The procedure by means of which the impeachment is carried out is the constitutional accusation. This model of impeachment arose in post-revolutionary France as a form of differentiated treatment of the criminality of ministers (23). The impeachment is a kind of parliamentary or congressional prelude to a judicial process, where it is the latter that will ultimately be called upon to determine whether the official in question is criminally responsible or not.*

*Preliminary impeachment, as can be seen, differs from impeachment, since, in the first case, Congress does not apply any sanction to the accused official, but limits itself to deciding whether or not to authorise the criminal jurisdiction [24] of the ordinary judiciary to initiate criminal proceedings. Congress decides, after a prior investigation, whether or not there is sufficient evidence to lift the immunity of a given official and prosecute him or her for crimes committed in the exercise of his or her functions"*<sup>18</sup>.

Along these lines, the Constitutional Court, on 23 February 2023, in Case 0003- 2022-CC/TC, issued a ruling in the case "Case of judicial control over the decisions of congressional bodies" and whose subject matter was the "Complaint of conflict of competence regarding judicial control over the decisions of congressional bodies", and which specifically in point 6 "On the alleged undermining of the powers to initiate investigations into any matter of public interest (art. 97 of the CPP) and to exercise political control over high-ranking State officials (art. 99 of the CPP): The special case of the president of the National Electoral Jury and the responsibility of the rulers". 97 of the CPP) and to exercise political control over high-ranking state officials (Art. 99 of the CPP): The special case of the president of the National Jury of Elections and the responsibility of those in power", states the following.

100. In any case, the assessment made by the Congress of the Republic regarding the possibility of carrying out impeachment and impeachment proceedings against the Supreme Court magistrate who exercises the role of representative in the NEB and, therefore, of its president, is not without foundation, as is clear from Article 179, paragraph 1 of the 1993 Constitution analysed above.

[...]

104. In this sense, removing the president of the JNE from the political control of his activity as such - being the person who personifies this constitutional organ of the State and, therefore, from the political control of the JNE.

The entire electoral system as a whole - is an act of impunity incompatible with the constitutional rule of law, which also contravenes the horizontal nature that public authorities should have among themselves, within a constitutional democracy.

105. This is why the Constitutional Court itself - in 2012 - noted the need to update the 1993 Political Constitution to formalise political control, not only in the case of the president of the JNE, but also for the members of the Plenary and the heads of the ONPE and the RENIEC. Thus, in the ruling in Case 00156-2012-PHC/TC, the following was held:

(...) the Constitutional Court urges the Congress of the Republic to reform article 99 of the Constitution, including the aforementioned officials of the electoral system among those dignitaries who enjoy the privilege of impeachment, or, as the case may be, including a provision that allows the privilege of impeachment to be extended to those officials that the law establishes, as was done in article 182 of the 1979 Constitution.

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<sup>17</sup> <https://tc.gob.pe/jurisprudencia/2003/00006-2003-AI.pdf>

<sup>18</sup> [http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/B2C55BC997A99D7105257D430075BB07/\\$FILE/Revista\\_Jur%Á3%6Ddica\\_Cajamarca.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/B2C55BC997A99D7105257D430075BB07/$FILE/Revista_Jur%Á3%6Ddica_Cajamarca.pdf)

106. As could be observed, this Court has noted an omission in our Fundamental text and has expressed that the derivative constituent must opt for a reform to incorporate high-level officials into the electoral system.

From the aforementioned ruling, it is clear that the Congress of the Republic must legislate on the modification of article 99 of the Constitution, including the other autonomous constitutional bodies as subject to constitutional accusation by impeachment and impeachment, and, furthermore, allusion is made to the fact that in ruling 00156-2012-PHC/TC, the Parliament had already been urged to complete the omission related to the incorporation of the other autonomous constitutional bodies within the scope of article 99 of the Constitution.

For the reasons set out above, we propose the approval of the suggested legal formula in order to complete the omission noted by the Constitutional Court, which we consider to be consistent with our legal system.

## **II. EFFECTS OF THE ENTRY INTO FORCE OF THE STANDARD**

This initiative does not contravene any constitutional mandate, since it seeks to reform the Constitution to include constitutionally autonomous bodies within the scope of Article 99 of the Constitution, in order to comply with the rulings issued in cases 0003-2022-CC/TC and 00156-2012-PHC/TC, in which the highest interpreter of the Constitution urged Parliament to consider other high-level officials within the scope of Article 99.

Approval of the proposal will require the amendment of the Rules of Procedure of the Congress of the Republic and other legal provisions that will allow the reform to be implemented.

Therefore, the initiative is framed within the scope of the Political Constitution and other legal norms of the national system.

## **III. COST-BENEFIT ANALYSIS**

The Draft Law does not represent greater expenses or costs to the State, since the proposed reform only includes other public officials within the scope of article 99 of the constitution.

The adoption of the bill will standardise the treatment of senior public officials with respect to the benefit of impeachment and at the same time the possibility of being sanctioned for constitutional violations.

It will benefit the institutions that are additionally incorporated because they will be strengthened by not being unprotected from politically, socially and economically motivated complaints, and at the same time it will allow their authorities to conduct themselves in accordance with the mandate of the fundamental charter, as they will be liable to political sanctions in the event of non-compliance.

It will benefit the population because it will have strong institutions that can perform their functions properly to guarantee neutrality and transparency in the electoral processes, which cannot be arbitrarily manipulated, bearing in mind that misconduct can lead to a sanction of disqualification for up to 10 years.

## **IV. COOPERATION WITH THE NATIONAL AGREEMENT**

This proposal is linked to the following state policies:

Strengthening the democratic regime and the rule of law.

We commit ourselves to consolidate the democratic regime and the rule of law to ensure a climate of stability and political cooperation, promote democratic competition and guarantee free and

transparent elections, pluralism and alternation in power. We declare that representative democracy is the basis of the organisation of the rule of law, which is strengthened and deepened by permanent, ethical and responsible citizen participation, within the framework of constitutionality.<sup>19</sup> "

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<sup>19</sup>[www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&ad=&cad=qa&uact=8&ved=2ahUKEwi4lcD9ioT7AhX507kGHQrOD2wQFnoECBM0AQ&url=h@s%3A%2F%&Fwww.acuerdonacional.pe%02F&usg=A0vVaw0hQJUEJdr5tkXfWJUcfvt](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&ad=&cad=qa&uact=8&ved=2ahUKEwi4lcD9ioT7AhX507kGHQrOD2wQFnoECBM0AQ&url=h@s%3A%2F%&Fwww.acuerdonacional.pe%02F&usg=A0vVaw0hQJUEJdr5tkXfWJUcfvt)

**VI. 4430/2022-CR - DRAFT CONSTITUTIONAL REFORM BILL INCORPORATING THE HOLDERS OF THE ELECTORAL SYSTEM INTO THE SCOPE OF THE FUNCTIONAL PREROGATIVE OF IMPEACHMENT AND IMPEACHMENT ESTABLISHED IN ARTICLE 99 OF THE CONSTITUTION**

The **FUERZA POPULAR** Parliamentary Group, on the initiative of Congresswoman **CARMEN PATRICIA JUÁREZ GALLEGOS**, in exercise of the right of initiative for constitutional reform conferred by Article 206 of the Political Constitution of Peru, and in accordance with Articles 75 and 76 of the Regulations of the Congress of the Republic, proposes the following draft law:

**LEGAL FORMULA**

**CONSTITUTIONAL REFORM LAW THAT INCORPORATES THE HOLDERS OF THE ELECTORAL IN THE SCOPE OF THE PREROGATIVE OF IMPEACHMENT AND IMPEACHMENT THIS ARTICLE 99 OF THE CONSTITUTION**

**Amendment of Article 99 of the Political Constitution**

Article 99 of the Political Constitution is modified, which will be drafted with the following text:

**"Article 99.** It is incumbent upon the Permanent Commission to accuse before Congress: the President of the Republic; members of Congress; Ministers of State; members of the Constitutional Court; members of the National Board of Justice; supreme judges; supreme prosecutors; the Ombudsman; the Comptroller General; members of the plenary of the National Jury of Elections; the head of the National Office of Electoral Processes and the head of the National Registry of Identification and Civil Status for infringement of the Constitution and for any offence they commit in the exercise of their functions, as well as for any other offence committed in the exercise of their functions.

**CARMEN PATRICIA JUÁREZ GALLEGOS**  
Congressman of the Republic

## **EXPLANATORY MEMORANDUM**

### **I. PROBLEMS AND SITUATION THAT ORIGINATES THE PRESENT PROPOSAL**

On 23 February 2023, i.e. very recently, the Constitutional Court informed the public - by means of a press release - that it had resolved the conflict of competence lawsuit that originated in Case 00003-2022-CC/TC, known as the "case of the judicial control of the decisions of the Congress of the Republic".

In this communication, the Court issued the following decision:

"By a majority of 5 votes, EXHORT the Congress of the Republic to reform article 99 of the Political Constitution, as well as to reform its regulations, to incorporate the members of the JNE, the head of the ONPE and the head of the RENIEC."<sup>20</sup>

The judgement in the above case was published on 3 March last, and in Judgement No. 5 it states the following:

"TO REITERATE THE EXHORTATION made to the Congress of the Republic - in the judgement handed down in Case 00156-2012-PHC/TC - to reform article 99 of the 1993 Political Constitution, as well as to reform its Regulations, in accordance with the present judgement and the jurisprudence of the Constitutional Court."<sup>21</sup>

Thus, we emphasise that the present initiative responds to the exhortation that the highest body of control of constitutionality has made, in the terms indicated above, where it expressly mentions a necessary constitutional modification, which however had already been exhorted since 2004 by the Constitutional Court at the time.

The argumentation of the substantive issue will be developed below, based on the importance of the issue that has generated the various exhortations of the Constitutional Court, as previously mentioned, that of 2004, that of 2012 and recently in this 2023.

### **II. JUSTIFICATION OF THE PROPOSAL**

#### **Constitutional accusation, pre-trial and impeachment:**

The concept of constitutional accusations, established in Articles 99 and 100 of the current Constitution, was analysed and redefined by the Constitutional Court almost two decades ago. Thus, on the occasion of the ruling in case 006-2003-AI/TC, it was on the basis of this ruling that it was understood and interpreted that Article 99 establishes two different institutions: the pre-trial and the impeachment, with different purposes and consequences.

The pre-trial is only for possible crimes committed in the exercise of the function. And, as the TC emphasises, in this case the Congress has the function of analysing the plausibility of the accusation, and it is up to it to accuse the Judicial Power.

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<sup>20</sup> At: <https://www.tc.eob.pe/institucional/notas-de-prensa/tribunal-constitucional-resolvio-el-conflicto-de-competencias-interpuesto-por-el-congreso-de-la-republica-contra-el-poder-judicial/> The note also expressly states that the respective judgments and votes will be published on the institutional web portal and notified in due course. Consulted on 2 March 2023.

<sup>21</sup>Judgment 74/2023 handed down in Exp. 003-2022-PCC/TC.

Available at:<https://tc.gob.pe/jurisprudencia/2023/00003-2022-CC.pdf> Accessed: 3 March 2023.



In this regard, the Court has developed the following with respect to pre-trial:

"By virtue of this privilege, the aforementioned public officials have the right not to be criminally prosecuted by the ordinary jurisdiction if they have not previously been subjected to a duly regulated political-jurisdictional procedure before the Congress of the Republic, in which the legislative body must have determined the verisimilitude of the facts that are the subject of the accusation, as well as their subsumption in one or more criminal type(s) of functional order, previously and unequivocally established in the law.

In this sense, the pre-trial process can only include accusations of the alleged criminal-legal (and not political) responsibilities of the state officials mentioned in Article 99 of the Constitution, for alleged crimes committed in the exercise of their functions. Once Parliament has investigated the complaint (which may come from within its own ranks) and has determined the existence of sufficient evidence that, from its perspective, constitutes the commission of a crime in the exercise of their functions, it acts as an accusing body, removing the dignitary's functional prerogative, suspending him from the exercise of his functions, and placing him at the disposal of the criminal jurisdiction.

Thus, in cases of impeachment, the functions of Congress can, to a certain extent, be assimilated to those of the Public Prosecutor's Office (because it accuses), and even to those of the investigating judge (because it previously investigates), but never to those of the deciding judge (because it never sanctions). The fact is that the power to apply sanctions on the basis of legal-criminal arguments is exclusive to the judiciary".<sup>22</sup>

Thus, as the Court summarises at the end of Ground 3, the pre-trial "is a functional prerogative enjoyed by certain officials, for the purpose of preventing them from being prosecuted before the criminal judiciary for offences committed in the "exercise of their functions, without a procedure with due process of law before the Congress of the Republic and the consequent accusation by the legislature itself".

However, impeachment, which is also established in Article 99 of the Constitution, is not a benefit but a special charge that only some high-ranking officials have, for which they may be subject to political responsibility and may be sanctioned according to the political misconduct or constitutional infraction committed.

In this case, the Constitutional Court has developed the following with regard to impeachment:

"(...) not only is impeachment enshrined in the Fundamental Charter, but also impeachment, that is, that which allows the initiation of proceedings against the officials listed in Article 99, on the grounds of "political misconduct" committed in the exercise of their functions, with the aim of "removing the power of those who misuse it and preventing them [...] from being reinvested in power in the future" (Broussard, Paulo. O impeachment. Editora Saraiva. 2nd Ed., 1992. p. 77). (Broussard, Paulo. O impeachment. Editora Saraiva. 2nd Ed, 1992. p. 77). In this respect, Bidart Campos refers that "it is called a "political" trial [...] because it is not a criminal trial; the aim is not to punish but to remove from office; not to judge an act as criminal, but a situation of government as inconvenient for the State". (Manual de Derecho constitucional argentino. Ediar., 1986. p. 612).

20. This is the way in which the constitutional provision according to which it is permissible to accuse the aforementioned public officials of "infringement of the Constitution" should be interpreted. And the fact is that any political misconduct committed by officials who make up the organic structure provided for in the Political Charter dangerously compromises the proper

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<sup>22</sup> At <https://www.tc.eob.pe/jurisprudencia/2003/00006-2003-AI.pdf> Accessed 2 March 2023.

functioning of the state apparatus. In these cases, the reason for the removal from office does not originate in the commission of a crime, but in the commission of misconduct that diminishes, to the highest degree, the trust placed in the official, which must be inextricably linked to the office he or she holds.

21. In this way, in the impeachment trial, the official is accused, prosecuted and, if necessary, sanctioned by the Congress itself, for single misdemeanours, strictly political.<sup>23</sup>

#### **The exhortation in the case of electoral bodies:**

The judgement in Exp. 006-2003-AI/TC in its 27th ground reasoned in particular that the absence of a pre-trial in the case of the heads of electoral bodies was inconsistent with the constitutional mission of these high officials, in accordance with Article 176 of the Constitution.

In other words, the TC considered that there was no justification for these high-ranking officials not to be covered by Article 99 of the 1993 Constitution. Thus, the following quote shows the basis of the aforementioned judgement, which is clear in its call for the constitutional reform of Article 99:

"27. Likewise, **this Collegiate observes that the members of the JNE, the Head of the ONPE and the Head of the RENIEC do not have the prerogative of impeachment, despite being public officials of the utmost importance in a democratic rule of law**, having the obligation to "ensure that the votes reflect the authentic, free and spontaneous expression of the citizens, and that the scrutinise are an accurate and timely reflection of the will of the elector expressed in the ballot boxes by direct vote" (Article 176 of the Constitution). Therefore, the Constitutional Court urges the Congress of the Republic to reform Article 99 of the Constitution, including the aforementioned officials of the electoral system among those dignitaries who enjoy the privilege of impeachment, or, as the case may be, including a provision to extend the privilege of impeachment to those officials that the ley establishes, as was done in Article 183 of the 1979 Constitution".<sup>24</sup>(emphasis added)

However, the most recent judgment, although it has not mentioned its predecessor from 2004, has taken up a judgment from a case in 2012, which does not have erga omnes effects, but which, illustratively, we take up, as this is what the TC has done in the judgment on the conflict of competence:

"105. This is why the Constitutional Court itself - in 2012 - noted **the need to update the 1993 Political Constitution in order to formalise political control, not only in the case of the president of the JNE, but also for the members of the Plenary and the heads of the Onpe and Reniec**. Thus, in the ruling in Case 00156-2012-PHC/TC, the following was held:

(...) the Constitutional Court urges the Congress of the Republic to reform article 99 of the Constitution, including the aforementioned officials of the electoral system among those dignitaries who enjoy the privilege of impeachment, or, as the case may be, including a provision that allows the privilege of impeachment to be extended to those officials that the ley establishes, as was done in article 183 of the 1979 Constitution.

106. As can be seen, this Court has noted an omission in our Fundamental Text and has expressed that the derivative constituent must opt for a reform to incorporate high-level officials into the electoral system.

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<sup>23</sup> At <https://www.tc.eob.pe/jurisDrudencia/2003/00006-2003-AI.odf> Accessed on 3 March 2023.

<sup>24</sup> The full judgment can be found at: <https://www.tc.gob.pe/jurisprudencia/2003/00006-2003- AI.pdf> Accessed 2 March 2023

107. However, the subjection of the president of the JNE to political control cannot be justified by the aforementioned formalism, given that the head of the three bodies that make up the electoral system is precisely this high official. This is because he is a judge of the Supreme Court. The president of the NEC is not elected from among its members; this is an exclusive position that falls to the supreme judge appointed as the representative of the Judiciary before the NEC, and as such, he or she has the prerogative-duty of impeachment and impeachment.

108. In this sense, and without prejudice to the reform, the president of the NEB, as a judge of the Supreme Court of Justice of the Republic, is subject to political control like any other of the dignitaries listed in Article 99 of the 1993 Political Constitution, with the guarantees of due process in the trial and impeachment proceedings, (...)”<sup>25</sup>(emphasis added).

It can be seen, then, that the exhortations made by the Constitutional Court in 2004 and 2023, which affect the content of Article 99 of the Constitution and the institutions of impeachment and impeachment - also known as constitutional accusations - the incorporation of the members and heads of the constitutional bodies that make up the electoral system (JNE, ONPE, RENIEC) should also be incorporated due to the criterion and principle of equality.

Thus, while high-ranking officials such as the President of the Republic, ministers, members of Congress, members of the TC and the JNJ, supreme judges and supreme prosecutors, and the heads of the Ombudsman's Office and the Comptroller's Office, have the prerogative-duty (as summarised by the TC) of impeachment and political trial, there is no reason why they should not have the same treatment as a prerogative and duty, each member of the Plenary of the JNE, regardless of whether or not they come from the Judiciary or the Public Prosecutor's Office, there is no reason why each member of the Plenary of the JNE should not have the same treatment as a prerogative and duty, regardless of whether or not they come from the Judiciary or the Public Prosecutor's Office (let us remember that the supreme judges in both institutions are already mentioned as subject to impeachment and impeachment in art. 99 of the Constitution). 99 of the Constitution); *therefore, the aim is that the political actors in charge of the political process, when carrying out an objective analysis, reject the initiation of a process when it is possible to perceive a motivation that is alien to the search for justice.*

*It should be taken into consideration that in the 1979 Political Constitution there was only one electoral body, in this case the National Jury of Elections, however, with our current Constitution, it is now divided into three autonomous entities of the same hierarchy, as stated in the constitutional text "they maintain relations of coordination among themselves", distributing the functions of the electoral or consultation processes that according to their attributions and conditions are specified in the Constitution and electoral regulations.*

### III. LEGISLATIVE HISTORY

Bill 4347/2022-CR (1 March 2023), from the Avanza País parliamentary group, has recently been presented, which proposes the amendment of article 99 of the Constitution, as well as article 39, which establishes a list of high-ranking civil servants.

Also on record is project 4333/2022-CR (28 February 2022) of the Acción Popular parliamentary group, with a proposal to amend Article 99 of the current Constitutional Charter.

It is also worth mentioning, also from this parliamentary period, Bill 1708/2021-CR, by Acción Popular, which, as part of a series of reforms for the transition to bicameralism, proposed incorporating the members of the National Jury of Elections into Article 99. In this case, an

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<sup>25</sup> Fundamentos 105-108 of the STC of exp. 003-2022\_PCC/TC. Consultation: 3 March 2023. At: <https://www.te.gob.pe/jurisprudencia/2003/00006-2003-AI.pdf>

Opinion<sup>26</sup> was issued - dated 8 June 2022 - which accumulates some twenty bills on bicameralism, in which the incorporation of the members of the JNE and the heads of the ONPE and the RENIEC was also proposed for article 99 of the Constitution.

Finally, it is worth mentioning that in previous parliamentary periods there were also initiatives on the matter, being relevant to mention, by way of example, bills 3134/2017-CR (which in turn is included in the aforementioned 4333/2022-CR), 2917/2013-CR (whose sole purpose was the reform to incorporate in article 99 the members of the JNE and the heads of ONPE and RENIEC, and 1064/2006-CR (only regarding the members of the JNE, which is also included in an opinion of the aforementioned period<sup>27</sup>).

#### IV. EFFECT OF THE ENTRY INTO FORCE OF THE STANDARD ON NATIONAL LEGISLATION

The effect of the proposed rule, if adopted in its exact terms, is set out in a comparative table below:

Political Constitution of 1993 in force	Proposed text
<p>Article 99. It is the responsibility of the Standing Committee to impeach before Congress: the President of the Republic; representatives to Congress; Ministers of State; members of the Constitutional Court; members of the National Council of the Judiciary; members of the Supreme Court; prosecutors; the Ombudsman; the President of the Republic; representatives to Congress; Ministers of State; members of the Constitutional Court; members of the National Council of the Judiciary; members of the Supreme Court; prosecutors; the Ombudsman; the President of the Republic; and the President of the Republic. Comptroller General for breach of the Constitution and for any offence committed by them in the exercise of their functions and for up to five years after they have ceased to hold office.</p>	<p>Article 99. It is the responsibility of the Standing Committee to impeach before Congress: the President of the Republic; representatives to Congress; Ministers of State; members of the Constitutional Court; members of the National Council of the Judiciary; members of the Supreme Court; prosecutors; the Ombudsman, the Ombudsman of the Republic, the Comptroller General, the members of the plenary of the National Jury of Elections, the head of the National Office of Electoral Processes and the head of the National Registry of Identification and Civil Status for infringement of the Constitution and for any offence they commit in the exercise of their functions and for up to five years after they have ceased to hold office.</p>

#### V. COST-BENEFIT ANALYSIS

The benefits or advantages and costs or disadvantages for each sector or actor involved in this constitutional reform proposal are presented below:

<sup>26</sup> Opinion available at: [https://wb2server.conj2reso.gob.pe/spley-portal-service/archivo/MjkyODY=/pdf/DC\\_660](https://wb2server.conj2reso.gob.pe/spley-portal-service/archivo/MjkyODY=/pdf/DC_660)  
Accessed on 3 February 2023

<sup>27</sup> Opinion accessed on 2 February 2023 and available at:

[https://www2.congreso.gob.pe/Sicr/TraDocEstProc/TraDoccondoc2006.nsf/d99575da99ebf305256f2e006d1cf0/f49b409c27de46c3052572de00044cb7/\\$FILE/00094DC03MAY160507.pdf](https://www2.congreso.gob.pe/Sicr/TraDocEstProc/TraDoccondoc2006.nsf/d99575da99ebf305256f2e006d1cf0/f49b409c27de46c3052572de00044cb7/$FILE/00094DC03MAY160507.pdf)

**COST-BENEFIT ANALYSIS TABLE**

<b>SECTORS/MAIN PLAYERS</b>	<b>BENEFITS OR ADVANTAGES</b>	<b>COSTS OR DISADVANTAGES</b>
<b>Congress of the Republic</b>	If the constitutional reform is passed, the Parliament will be able to exercise the power to control senior officials and civil servants by means of a constitutional indictment, including in the case of those in charge of the electoral system, which is currently prohibited.	The Congress could see its parliamentary function of control increased via the constitutional indictment, which could impact on the demand for cases in the Sub-Commission of Constitutional Indictments, mainly.
<b>Public Ministry and Judiciary</b>	A possible benefit for the public prosecutor's office consists in the fact that, if there is a preliminary hearing for the electoral system incumbents, it will no longer be responsible for carrying out the minimum initial investigation of the verisimilitude of the functional crime that is being denounced. With this, it will be able to focus at a later stage on cases that merit investigation and are not merely allegations of a legal appearance or for non-legal-criminal purposes.	The Public Prosecutor's Office may not present. The decision of the Congress of the Republic, in relation to the allegations of functional crimes of the members of the Plenary of the JNE, the head of the ONPE and RENIEC, has not been taken into account.
<b>Members of the Plenary National Elections</b>	All members of the Plenary of the JNE will have the benefit of an instance in which they can analyse and dismiss malicious or unmeritorious criminal complaints to be heard by the Public Prosecutor's Office and subsequently by the judiciary (pre-trial). In the case of the president of the Plenary of the NEB, who is at the same time a judge of the Supreme Court of Justice, it will be clear that he/she is entitled to these prerogatives even in the case of the exercise of his/her position in the NEB. The same applies to the Supreme	If impeachment proceedings are established for the members of the plenary of the JNE, they are liable to be suspended, dismissed and disqualified because of a constitutional violation, such as in the case of other holders of autonomous constitutional bodies and state powers, ministers, members of congress, etc.

	Prosecutor who is a member of the Plenary of the NEC	
<b>Heads of the National Electoral Process Office (ONPE)</b>	Both holders of agencies Constitutional electoral self-employed workers have the following benefits an instance in which it is possible to analyse and dismiss complaints malicious criminal offences or that lack merit in order for them to be seen by the Public Prosecutor's Office and subsequently by the judiciary (pre-trial).	AI to establish impeachment for these ACO holders electoral, are liable to be suspended, dismissed e disqualified on account of a constitutional infringement, such as in the case of other holders of bodies constitutional bodies the autonomous and ministers, ministers, congressmen, etc.
<b>Constitutional Court</b>	The main benefit is that it the exhortation made recently as a result of a conflict of jurisdiction that it has resolved is being complied with. Likewise, it complies with the same exhortation made by the Court in 2004, by means of the STC of Exp. 006-2003-AI/TC.	No perceived harm or costs direct to the Constitutional Court.
<b>Citizenship</b>	If this reform is approved, the citizens will benefit from having a more balanced legal system, in which the holders of the system electoral bodies have an instance of accusation criminal charges thoughtful, by functional crimes, and at the same time, a sanction instance or space politics via impeachment.	No perceived direct harm for citizenship.

## VI. RELATIONSHIP BETWEEN THE INITIATIVE AND THE LEGISLATIVE AGENDA AND THE NATIONAL AGREEMENT

This legislative initiative is in line with the State Policies of the National Agreement, specifically with the FIRST policy, which refers to strengthening of the democratic regime and the rule of law. In this respect, its compatibility with, in particular, points (a) and (d), cited below, is noteworthy:

*"We commit ourselves to consolidate the democratic regime and the rule of law in order to ensure a climate of stability and political cooperation, to promote democratic competition and to guarantee free and transparent elections, pluralism and alternation in power. We declare that representative democracy is the basis for the organisation of the rule of law, which is strengthened and deepened by permanent, ethical and responsible citizen participation, within the framework of constitutionality.*

***To this end, the State shall: (a) shall defend the spirit of the Constitution by ensuring its functioning as a unified and decentralised constitutional State, under the principles of independence, pluralism, balance of powers and the other principles of which it is***

**composed;** (b) *guarantee respect for ideas, political organisations and other civil society organisations, and ensure that fundamental guarantees and freedoms are safeguarded, bearing in mind that the individual and society are the supreme purpose of the State;* (c) *shall encourage the affirmation of a democratic culture that promotes a citizenry aware of its rights and duties,* and (d) **shall establish rules to punish those who violate or collaborate in the violation of the Constitution, fundamental rights and legality.**<sup>28</sup> (emphasis added)

Likewise, the proposed constitutional reform is in line with the objectives of the Legislative Agenda for the 2022 - 2023 Annual Period, approved by Congressional Legislative Resolution N° 002-2022-2023-CR, as follows:

LEGISLATIVE AGENDA FOR THE ANNUAL SESSION 2022-2023		
NATIONAL AGREEMENT		ISSUES / DRAFT LAWS
OBJECTIVE	STATE POLICIES	1.FUNCTIONING OF STATE ORGANS AND BODIES
1.DEMOCRACY AND THE RULE OF LAW	1.STRENGTHENING THE DEMOCRATIC AND RULE OF LAW	4.CONSTITUTIONAL REFORMS

Source: Congressional Legislative Resolution N° 002-2022-2023-CR. Relevant part.

<sup>28</sup> At: <https://acuerdonacional.pe/politicas-de-estado-del-acuerdo-nacional/politicas-de-estado/politicas-de-estado-castellano/i-democracia-y-estado-de-derecho/1-fortalecimiento-del-regimen-democratico-y-del-estado-de-derecho/> Accessed: 28 February 2023.