



**PERMANENT COMMISSION OF THE CONGRESS OF THE REPUBLIC
SUBCOMMISSION ON CONSTITUTIONAL ACCUSATIONS
YEARLY PERIOD 2018-2019**

CONSTITUTIONAL COMPLAINT No. 2

NOTIFICATION 002-2-1 No. 2-2018-2019-SCAC-CP/CR

Lima, November 28, 2018

Mr. ALFONSO CHUNGA RAMÍREZ
Juan Antonio Arrieta No. 255—Pueblo Libre
Hand delivered.-

Sir:

My highest consideration:

In expressing my cordial greeting, I am writing to you to send you, attached to the present document, a copy of the Determination of Facts and Relevance of Evidence Report of Constitutional Complaint No. 2, presented by the Congressional Representative Javier Velásquez Quesquén, so that you will be familiar with this document in your role as complainant[.]

Sincerely,

[signature]
[seal:] CONGRESS OF THE REPUBLIC
REPUBLIC OF PERU [illegible]
CÉSAR ANTONIO SEGURA IZQUIERDO
President
Subcommission on Constitutional Accusations
CONGRESS OF THE REPUBLIC

P.S.:

- Copy of Determination of Facts Report pages 001-0020

SUBCOMMISSION ON CONSTITUTIONAL ACCUSATIONS
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DETERMINATION OF FACTS AND RELEVANCE OF EVIDENCE REPORT

CONSTITUTIONAL COMPLAINT NO. 2
AGAINST OSCAR URVIOLA HANI, FORMER JUSTICE OF THE PERUVIAN
CONSTITUTIONAL TRIBUNAL

I. CONSTITUTIONAL COMPLAINT NO. 2

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On September 15, 2016, Augusto Pretel Rada and Alfonso Chunga Ramírez (hereinafter, the complainants) in their capacity as bondholders of the Land Reform debt, and under Article 99 and 102 of the Constitution, as well as Article 89 of the Regulations of Congress, presented the Subcommittee on Constitutional Accusations with a constitutional complaint against former Justice Oscar Urviola Hani of the Constitutional Tribunal (hereinafter, the accused), for alleged infringement of Articles 427 and 428 of the Penal Code that address the crimes of forgery and submitting false statements, respectively, and Article 418 of the Penal Code for alleged commission of the crime of judicial misconduct.

[initials]

On June 26, 2017, at the eleventh ordinary session of the Subcommittee on Constitutional Accusations, the qualification report was approved declaring the constitutional complaint against Oscar Urviola Hani for the alleged commission of the crimes of judicial misconduct, forgery and submitting false documents, established in Articles 418, 427, and 428, respectively, of the Penal Code, crimes allegedly committed in falsifying the Constitutional Tribunal Resolution dated July 16, 2013, enforcing the judgment handed down in file 022-1996-AUTC, in order to simulate a tie to reach the six obligatory votes and make use of his casting vote.

On November 3, 2017, the Permanent Commission of the Congress of the Republic endorsed the qualification report approved by the Subcommittee on Constitutional Accusations.

On November 6, 2017, the Subcommittee on Constitutional Accusations held its second session, in which it unanimously resolved to appoint Congressman Rolando Reátegui Flores as delegate of the constitutional complaint against the former Justice Oscar Urviola Hani.

Finally, at the November 19, 2018 session, the Subcommittee on Constitutional Accusations commissioned the undersigned Congressman Javier Velásquez Quesquén to prepare a new

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report on the determination of facts and relevance of the evidence or, where appropriate, ratify the terms of the report prepared by the previous delegate, in the constitutional complaint made by citizens Augusto Pretel Rada and Alfonso Chunga Ramírez against former Justice Oscar Urviola Hani.

Article 89.d.2 of the Regulations of the Congress of the Republic establishes the following:

For the investigation process, the Subcommittee may delegate to one of its members the realization, within a period of not more than five (5) business days after the act of delegation, the following procedural acts:

- *Determination of the facts under investigation.*
- *Evaluation of the relevance of the evidence and/or indicators and the recommendation to pursue other necessary evidentiary means.*

Once the facts that are the subject of the investigation and the evidence and indicators to be taken into account are determined, the designated member of Congress shall submit a written account to the Presidency of the Subcommittee about these acts, by virtue of which a session will be convened within five (5) working days for the respective hearing and the complainant, the accused, the witnesses, and the experts shall be notified.

Consequently, pursuant to what is set forth in Article 89.d.2 of the Regulations of the Congress of the Republic, I am hereby preparing this Report on the Determination of Facts and Relevance of the Evidence.

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Once the facts that are the subject of the investigation and the evidence and indications to be considered are determined, the designated member of Congress will submit a written account to the Presidency of the Subcommittee on these acts, by virtue of which a session will be convened within five (5) working days for the respective hearing and the complainant, the accused, the witnesses, and the experts will be notified.

1.1. CONSTITUTIONAL COMPLAINT

By means of a document dated September 15, 2016, Augusto Pretel Rada and Alfonso Chunga Ramírez presented a constitutional complaint to the Subcommittee on Constitutional Accusations against the Justice of the Constitutional Tribunal Oscar Urviola Hani. The accused is alleged to have committed a crime in the course of duties pursuant to Article 418, that establishes the crime of judicial misconduct, Article 427, on forgery, and Article 428, on submitting false documents, by carrying out the following activities:

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- Use of the abovementioned forged resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, a resolution referred to as an enforcement of the judgment and which was posted on the Constitutional Tribunal's web site on July 16, 2013, in order to simulate a tie and thus reach the six compulsory votes needed to make use of his deciding vote.

On this point, the constitutional complaint establishes the following:

- a. The plenary session of the Constitutional Tribunal (TC) in which the file related to the Land Reform debt bonds would be discussed was held on July 16, 2013. At the beginning of the session, the President of the Constitutional Tribunal at the time, Oscar Urviola Hani, proposed debating file No. 00022-1996-PI/TC linked to the Land Reform debt bonds.
- b. On the same date that the plenary session of the Constitutional Tribunal was held, a draft resolution signed by constitutional Justices Eto Cruz and Mesía Ramírez, logged by the secretariat of the institution in question, proposed that the value of the Land Reform debt bonds be updated by applying as a correction factor the official rate of inflation, which is the consumer price index as measured and published by the National Institute of Statistics and Informatics — INEI.
- c. However, despite having a draft resolution signed under the criterion outlined in the preceding paragraph, former Justice Urviola Hani delivered to former Justice Eto Cruz a draft resolution that proposed discharging the State's obligations represented in the Land Reform debt bonds.
- [initials] d. Former Justice Eto Cruz, obeying the order of the President of the Constitutional Tribunal, presented the draft to the session, in breach of his obligation to desist from his original draft.
- e. The complainants point out that former Justice Eto Cruz told the Public Prosecutor's Office that it was former Justice Urviola Hani who gave him the draft for it to be presented as his own and get the necessary endorsements for its approval, as indicated in the police report.
- f. Similarly, the complainants say that former Justice Urviola Hani imposed the vote on the draft in the same session in which it was brought to the attention of the Justices, thereby violating the Constitutional Tribunal's regulations.
- g. Former Justice Mesía Ramírez withdrew from the session before the vote took place.
- h. The complainants also point out that former Justices Urviola Hani, Eto Cruz, and Álvarez Miranda voted in favor of the proposal set forth by the Ministry of Economics and

Finance. Former Justices Vergara Gotelli and Calle Hayen signed dissenting opinions.
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- i. Secretary-Rapporteur Oscar Díaz Muñoz attested that he had before him the dissenting opinion of former Justice Mesía Ramírez. With this statement by the Secretary-General, the vote appeared to be cast by six judges, when in fact only five were present at the session.
- j. The Provincial Deputy Prosecutor of the 12th Criminal Prosecutor's Office of Lima, Karina Katty Bonilla Mendoza, in a visual inspection carried out at the Constitutional Tribunal on July 1, 2015, verified that the TC Resolution of July 16, 2013 contained pages that had been tampered with and the signature of Justice Mesía Ramírez was an inserted photocopy.
- k. By mandate of the Public Prosecutor's Office, the National Police of Peru carried out expert document analysis on the Resolution dated July 16, 2013 handed down in file No. 0022-1996-Pin-O, concluding in its Expert Handwriting and Document Examination Report No. 12439-12454/2015 that the vote attributed to Justice Mesía Ramírez contained 35 pages that had been tampered with and an inserted photocopied signature.
- l. Finally, they point out that former Justice OSCAR URVIOLA HANI would have committed the crime of judicial misconduct referred to in Article 418 of the Penal Code, by putting together the Constitutional Tribunal Resolution handed down in file 022-1996-AI/TC, a resolution referred to as enforcement of the judgment and posted on the web site of the Constitutional Tribunal on July 16, 2013.

1.2. EVIDENCE OFFERED IN THE COMPLAINT

The evidence presented in the constitutional complaint with respect to the acts imputed to former Justice Oscar Urviola Hani, is as follows:

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- a. A photocopy of the expert handwriting and document analysis No. 12439-12454/2015 conducted on the Resolution dated July 16, 2013 by the National Police of Peru at the Constitutional Tribunal's headquarters. When the prosecution requested said document, the Constitutional Tribunal claimed that such documentation could not leave the TC.
- b. A photocopy of the initial criminal investigation report to the Secretary-Rapporteur of the Constitutional Tribunal, Oscar Díaz Muñoz, for commission of the crime of counterfeiting the Resolution dated July 16, 2013.
- c. A photocopy of the Constitutional Tribunal Resolution of July 16, 2013, handed down in file No. 00022-1996-PI/TC of those followed by the representative of the Engineers' Bar Association of Peru on enforcement of the judgment of March 15, 2001, that declared the complaint of unconstitutionality against Law No. 26597 to be partially well-founded.

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- d. A photocopy of the police statement on the investigation of Oscar Díaz Muñoz conducted by the Public Prosecutor's Office. Complaint 119-2015. 12th Criminal Prosecutor's Office.
- e. A photocopy of the December 14, 2015 *Velaverde* newspaper article on the case of the phantom adviser of the Constitutional Tribunal.
- f. A photocopy of the July 1, 2015, *Diario Exitosa* newspaper article revealing that the supervisory body and President of the Constitutional Tribunal failed to investigate the scandalous case of the fraudulent vote.
- g. A photocopy of the July 2015 *Diario La Voz de Lima* newspaper article, "Land reform in the country of chaos," July 2015.
- h. A photocopy of the June 18, 2015 *Diario Caretas* newspaper article on the press release of the Association of Peruvian Land Reform Bondholders, "Constitutional Tribunal issued an unfair resolution, land reform bondholders are left unprotected and are prevented from receiving fair payment on the land reform debt."
- i. A photocopy of the April 25, 2015, *Diario Exitosa* newspaper article "Scandal over a judgment that was tampered with in the TC."
- j. A photocopy of the January 9, 2016 *Diario Expreso* newspaper article "False vote in the TC."
- k. A photocopy of the June 26, 2015, *Diario Exitosa* newspaper article "Urviola has the gall to tamper with a document to say that this is my vote."
- l. A photocopy of the September 2015 *Diario La Voz de Lima* newspaper article.
- m. A photocopy of the November 6, 2016 *Diario Expreso* newspaper article.
- n. A photocopy of November 10, 2014 *Diario Velaverde* newspaper article.
- o. A photocopy of the March 20, 2017 *Diario Velaverde* newspaper article.
- p. A photocopy of the October 19, 2015 *Diario Velaverde* newspaper article.

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- q. Photocopy of *Velaverde* newspaper article, April 17, 2017.
- r. Photocopy of *Velaverde* newspaper article, January 11, 2016.
- s. Photocopy of *La República* newspaper article, April 11, 2017.
- t. Photocopy of *Velaverde* newspaper article, November 14, 2016.
- u. Photocopy of *Velaverde* newspaper article, March 20, 2017.
- v. Photocopy of the qualification of the Constitutional complaint No. 2, approved at the June 26, 2017 session.

1.3. DEFENSE

With regard to the defense presented by the accused, Oscar Urviola Hani, the accused submitted his defense to the Subcommittee on Constitutional Accusations on November 14, 2017, in which the following arguments are detailed:

- a. He maintains that he never gave former Justice Eto Cruz a draft resolution on the "Land Reform Bonds" case, as the reporting judge in that case was Justice Eto and he was therefore the only one who could present a preliminary draft or replace it.
- b. He also states that it is not true that on July 16, 2013, he proposed discussing the Land Reform Bonds case, as its discussion on that date was actually a continuation of a debate that had begun several sessions prior to that, as evidenced by the minutes from the plenary session of the Constitutional Tribunal dated July 9, 2013.
- c. He contends that, as stated in the minutes from the plenary session of the Constitutional Tribunal dated 16 July 2013, former Justice Eto Cruz presented a new draft of the court resolution to the plenary session that he endorsed and argued in favor of to the other Justices, and as a result his original draft was abandoned, as proved by his letter dated July 15, 2013.
- d. He also states that it is not true that former Justice Mesía Ramírez had left the session before the vote took place, as indicated in the minutes from the Constitutional Tribunal dated July 16, 2013, where it shows that the former Justice voted in the case of Land Reform Bonds, remained in the session until its completion, stated that he ratified the

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vote that had already been submitted and that he was not going to change it, and signed the corresponding minutes.

- e. He also states that it is not true that a draft motion for a resolution by the Ministry of Economics and Finance had been voted on. What was voted on, pursuant to the law, was the new proposal drawn up by the Rapporteur of the case, former Justice Eto Cruz.
- f. The complainants fail to mention that in the July 16, 2013 session, former Justice Mesía Ramírez also issued a dissenting vote, as a result of which there were enough votes to issue a resolution.
- g. It is not true that the prosecution carried out a visual inspection on July 16, 2013; he maintains that this was done on May 13, 2015. He also claims that the prosecution at no time concluded that the resolution handed down in that case had been tampered with, and he therefore maintains that the prosecution requested that the document be transferred to the Technical Graphology Laboratory of the Prosecutor's Office for a brief period.
- h. He does not deny that correction fluid was used to "give a dissenting opinion format" to the vote of former Justice Mesía Ramírez. He notes, however, that this is normal practice in the Constitutional Tribunal, even during the presidency of former Justice Mesía Ramírez himself.
- i. He further states that the prosecutor's office did not carry out any expert test to determine the authenticity of the signature of former Justice Mesía Ramírez.
- j. He notes that it is not true that the former Secretary of the Constitutional Tribunal has stated that "the vote attributed to Justice Mesía Ramírez is a document that has been tampered with."
- k. He notes that the day after the resolution was posted on the web site of the Constitutional Tribunal, former Justice Mesía Ramírez appeared on Radio Programas del Peru to defend the resolution in the case of Land Reform Bonds.
- l. That a week later former Justice Mesía Ramírez presented his letter to which the complainants allude and that a response to said letter was provided.
- m. Finally, he maintains that in the minutes dated August 13, 2013 Mesía Ramírez, together with the other Justices, agreed to close the issue of the vote in the case of Land Reform Bonds.

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1.4. EVIDENCE OFFERED IN DEFENSE

The defense evidence submitted by former Justice Oscar Urviola Hani is the following:

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a. A photocopy of the minutes from the plenary session of the Constitutional Tribunal dated July 9, 2013, which would show that all members of the Constitutional Tribunal, including former Justice Mesía Ramírez, agreed to postpone the discussion of the case of Land Reform Bonds to the next session on July 16, 2013. (Exhibit-A of the defense)

b. A photocopy of the minutes from the plenary session of the Constitutional Tribunal dated July 16, 2013, which would demonstrate that former Justice Eto Cruz changed his original draft resolution, and that former Justice Mesía Ramírez participated and signed said minutes, and that it is not true that the latter had left the session. (Exhibit-B of the defense)

c. A photocopy of a letter dated July 15, 2013, in which former Justice Eto Cruz communicated in writing, with the Secretary-Rapporteur Oscar Díaz Muñoz, in order to amend his original draft. (Exhibit-C of the defense)

d. A photocopy of the prosecutor's record dated May 13, 2015, which would prove that the prosecutor's office did not perform a visual inspection. (Exhibit-D of the defense)

e. A list of resolutions by the Constitutional Tribunal with amendments, which would demonstrate that this is a common practice and is accepted by the Constitutional Tribunal. (Exhibit-E of the defense)

f. A CD containing the interview of former Justice Mesía Ramírez on RPP TV, which would demonstrate his position in favor of the case of the Land Reform Bonds. (Exhibit-F of the defense)

[illegible handwriting] g. A photocopy of a letter by former Justice Mesía Ramírez, which would demonstrate that on July 22, 2013 he indicated that what was ruled on July 16, 2013 was null and void. (Exhibit-G of the defense)

h. A photocopy of a letter dated August 1, 2013 sent by the accused to former Justice Mesía Ramírez indicating that the requested annulment could not be ruled on. (Exhibit-H of the defense)

i. A photocopy of the minutes from the plenary session of the Constitutional Tribunal dated August 13, 2013, in which all of the Justices agreed to cease discussing the issue of the Land Reform Debt bonds. (Exhibit-I of the defense)

j. A photocopy of fifty-three (53) official documents from the Congressional Administrative Office in which notification is given of the filing of said allegations against the accused for the same case of the Land Reform Debt bonds due to the fact that the complainants have no legal right to act. (Exhibit-J of the defense)

II. DETERMINATION OF THE FACTS THAT ARE THE SUBJECT OF THE INVESTIGATION AND RELEVANCE OF THE EVIDENCE

2.1. DETERMINATION OF FACTS THAT ARE THE SUBJECT OF THE INVESTIGATION

Former Justice Oscar Urviola is charged with falsifying the Resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, resolution that is referred to as an enforcement of judgment, posted on the web site of the Constitutional Tribunal July 16, 2013, and the use of the aforementioned falsified resolution to simulate a tie and reach the six obligatory votes to make use of his deciding vote. Therefore, this conduct would allegedly constitute the crime of falsification of documents and submitting false documents, pursuant to Articles 427 and 428 of the Penal Code and the crime of judicial misconduct, pursuant to Article 418 of the Penal Code.

Specifically under Article 89.d.2. of the Regulations of the Congress of the Republic, to determine the facts that are the subject of the investigation, we will differentiate those facts that are not in dispute and/or established, on the one hand, with those facts that are critical to determine in the investigation for the subsequent final report.

2.1.1. FACTS THAT HAVE BEEN ESTABLISHED AND/OR ARE NOT IN DISPUTE

- a. The Justices of the Constitutional Tribunal agreed to continue the debate on the case of Land Reform Bonds on July 16, 2013, mainly with respect to implementation of the current value criterion scheme.

Evidence: A photocopy of the minutes from the plenary session of the Constitutional Tribunal dated July 9, 2013, which would show that all members of the Constitutional Tribunal including former Justice Mesía Ramírez, agreed to postpone the debate on the case of Land Reform Bonds to the following session to be held on July 16, 2013. (Exhibit-A of the defense)

- b. The plenary session was held on July 16, 2013 in which Justices Álvarez Miranda, Eto Cruz, and Urviola Hani spoke in favor of the criterion of the dollarization of the debt, and the dissenting votes were those of Justices Calle Hayen, Vergara Gotelli, and Mesía Ramírez, the latter Justice being at issue. Given the fact that there was a tie vote, the President exercised the deciding vote for the criterion proposed by former Justice Eto Cruz, which was approved by the majority.

Evidence: A photocopy of the Constitutional Tribunal Resolution dated July 16, 2013, handed down in file No 00022-1996-PI/TC in those followed by the representative of the Engineers' Bar Association of Peru on enforcement of the judgment dated

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March 15, 2001, which declared the complaint of unconstitutionality against Law No. 26597 to be partially well-founded. (Exhibit-C to the complaint).

- c. Former Justice Oscar Urviola, in his capacity as President of the Constitutional Tribunal, handed over to former Justice Eto Cruz, in his capacity as reporting judge, a new draft resolution, which later became the final judgment handed down in file No. 00022-1996-PI/TC

Evidence: A photocopy of police statement of the investigation followed by the Public Prosecutor's office against Oscar Díaz Muñoz. Complaint 119-2015. 12th Criminal Prosecutor's Office. (Testimonial statements by former Justices Eto Cruz and Mesía Ramírez)

- d. On July 22, 2013, former Justice Mesía Ramírez sent an official communication to the President of the Constitutional Tribunal at that time, Oscar Urviola Hani, in which he made known his awareness that the vote that had been posted on the web site presented amendments he had not authorized, whereupon he maintained that the reporting judge's certification did not conform to reality, as evidenced in Exhibit 1G presented in the defense.

Evidence: A photocopy of a letter from former Justice Mesía Ramírez dated July 22, 2013, finding that the resolution dated July 16, 2013 was null and void. (Exhibit-G of the defense)

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- e. On August 1, 2013 Oscar Urviola Hani answered the official communication sent by Mesía Ramírez, rejecting the null and void finding and stating that in the plenary session of July 16, 2013, the change in vote by Justice Eto Cruz who drafted the opinion was discussed and voted on, and that Mesía Ramirez had ratified the vote he had already presented at the plenary session.

Evidence: A photocopy of a letter dated August 1, 2013, sent by the accused to former Justice Mesía Ramírez indicating that the null and void finding could not be upheld. (Exhibit-H of the defense)

- f. On August 13, 2013, a plenary session would have been held at the Constitutional Tribunal in which it was agreed that the issue of Land Reform Debt Bonds was closed, and that any clarification needed to be resolved by those who voted in the majority.

Evidence: A photocopy of the meeting minutes from the plenary session of the Constitutional Tribunal dated August 13, 2013 in which all the Justices agreed to consider the issue of the Land Reform Debt Bonds to be closed. (Exhibit-I of the defense)

- g. We must clarify one point and mention that the date of the visual inspection by the Prosecutor was carried out on May 13, 2015. The complainants stated that this was done on July 1, 2015. However, we have noted that the qualification report mistakenly indicates that the date was July 16, 2013. The accused indicates that the date was May 13, 2015, as the date.

Evidence: A photocopy of the expert handwriting and document analysis report No. 12439-12454/2015 written by the National Police of Peru at the headquarters of the Constitutional Tribunal that was conducted on the Resolution dated July 16, 2013. When the prosecution requested said document, the Constitutional Tribunal stated that such documentation could not leave the TC.

- h. Lastly, as mentioned in the constitutional complaint, which has not been denied but rather, on the contrary, has been admitted in the defense by former Justice Oscar Urviola, correction fluid was used on the document in question, which allegedly contains the dissenting vote of former Justice Mesía Ramírez.

Evidence: A photocopy of the expert handwriting and document analysis report No. 12439-12454/2015 written by the National Police of Peru at the headquarters of the Constitutional Tribunal that was conducted on the Resolution dated July 16, 2013. When the prosecution requested the document, the Constitutional Tribunal stated that such documentation could not leave the TC.

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2.1.2. DETERMINATION OF FACTS FOR THE INVESTIGATION

1. To determine whether when turning over the new draft by former Justice Oscar Urviola, in his capacity as former president, to former Justice Eto Cruz, in his capacity as reporting judge, there was any form of **coercion, imposition, or intimidation** in getting it submitted. Former Justice Oscar Urviola has had the temerity to deny that it was delivered. However, former Justices Eto Cruz as well as Mesía Ramírez themselves have stated that said delivery did take place.
2. To determine whether the original draft submitted by former Justice Eto Cruz was dismissed, since the alleged letter sent by said Justice is contained in a simple document that is undated.
3. To determine whether holding the vote on the new draft resolution at the same meeting at which it was made known to the Justices violates the Regulations of the Constitutional Tribunal which in Articles 44 and 44-A establish that there is a period of 48 hours whenever

there is a change in the draft so that it can be submitted for discussion and vote.

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4. To determine whether former Justice Mesía Ramírez left the Constitutional Tribunal's plenary session before the vote on the new draft resolution took place.
5. To determine whether there was any influence or interference by the Executive Branch, or specifically by the Ministry of Economics and Finance in the development of the new draft resolution submitted by former Justice Eto Cruz at the plenary session of the Constitutional Tribunal held July 16, 2013.
6. To determine if former Justice Oscar Urviola Hani, in his capacity as former president of the Constitutional Tribunal, in tampering with a draft of the resolution to use it to make it appear as a dissenting vote of former Justice Carlos Mesía Ramírez, committed the crime of falsification of documents as defined in Article 427 of the Penal Code.
7. To determine whether former Justice Oscar Urviola Hani, as former president of the Constitutional Tribunal, in shaping the Constitutional Tribunal's resolution handed down in the 022-1996-AI/TC resolution, referred to as execution of judgment, and posted on the web site of the Constitutional Tribunal on July 16, 2013, committed the crime of submitting false documents as defined in Article 428 of the Penal Code.
8. To determine whether the conduct of former Justice Oscar Urviola Hani, in his capacity as former president of the Constitutional Tribunal, in shaping the Constitutional Tribunal's resolution handed down in file 022-1996-AI/TC, a resolution referred to as an enforcement of the judgment, and posted on the web site of the Constitutional Tribunal on July 16, 2013, constitutes the crime of judicial misconduct regarding documents as defined in Article 418 of the Penal Code.
9. To determine whether the existing evidence can constitute a clear or probable showing of the commission of the constitutional offenses and/or crimes while in office that the accused are charged with, while still complying with the requirements of objective veracity, constitutionality of the evidentiary process, the usefulness and relevance of the evidence, as established by the Constitutional Tribunal.

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2.2. RELEVANCE OF THE EVIDENCE

The term "*relevance of the evidence*" should be understood in a broad sense, not only if the evidence is directly related to the subject of the evidentiary procedure, but whether it has also been obtained by respecting the essential content of fundamental rights (the so-called

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constitutionality of the evidence), the utility of said evidence as long as it has the capacity to produce certainty, and its objective veracity, which requires that the evidence should give an accurate reflection of the reality that one is trying to prove.

Our Constitutional Tribunal¹ in addressing the fundamental right to evidence, expressly states the following:

"The evidence capable of producing certain or probable knowledge in the judge's mind must meet the following characteristics:

- (1) Objective veracity, according to which the evidence exhibited in the process should give an accurate reflection of what happened in reality; Also, prima facie, it is a requirement that the trajectory of the evidence be susceptible to being controlled by the parties involved in the process, which does not imply that it is the judge, finally, who is responsible for reasonably deciding whether the material should be admitted as evidence, excluded, or have limits placed on it. In this way, certainty of the suitability of the evidentiary material can be acquired, since it will conform to the truth of what happened and it will not have been susceptible to manipulation;*
- (2) Constitutionality of the evidentiary activity, which implies the prohibition of acts that violate the essential content of fundamental rights or transgressions in the legal procedure of in obtaining, receiving and evaluating the evidence;*
- (3) Utility of the evidence, a feature that directly links the evidence with the allegedly criminal act that was committed, because this feature will be used to verify the usefulness of the evidence as long as said evidence produces a judicial certainty for the resolution or contribution to the resolution of the specific case;*
- (4) Relevance of the evidence, given that the evidence will be deemed pertinent if it is directly related to the subject of the procedure, so that if it is not directly related to the alleged criminal act it could not be considered proper evidence."*

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ANALYSIS OF THE CLAIMANT'S EVIDENCE			
No.	Evidence	Analysis	Decision
1	A photocopy of the expert handwriting and document examination No. 12439-12454/2015 carried out by the National Police of Peru, at the headquarters of the Constitutional Tribunal, on the resolution dated July 16, 2013.	The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote. On this point, the handwriting and document examination expertise is directly related to the acts given that it allows one to determine whether tampering of the relevant resolution	RELEVANT

¹ Study of the sentence handed down in File No. 1014-2007-PHC/TC, legal fundamental 12

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		occurred in order to make it pass as the dissenting vote of former Justice Mesía Ramírez.	
2	A photocopy of the opening of a criminal investigation of the Secretary-Rapporteur of the Constitutional Tribunal, Oscar Díaz Muñoz, for commission of the crime of falsifying the resolution of July 16, 2013	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, and posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>On this point, criminal proceedings brought forth against the former secretary of the Constitutional Tribunal are important in determining the responsibility of the Tribunal's president, Oscar Urviola, since both of these crimes are connected; nevertheless, the former Justice cannot be prosecuted while enjoying the prerogative of a pre-trial process.</p>	RELEVANT
3	A photocopy of the Constitutional Tribunal resolution of July 16, 2013, handed down in file No. 00022-1996-PI/TC of those followed by the representative of the Association of Engineers of Peru on enforcement of the sentence of March 15, 2001, that declared the complaint of unconstitutionality against Law No. 26597 partially well-founded.	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>This resolution contains the so-called "dissenting vote" of former Justice Carlos Mesía Ramírez, so it constitutes a primary source of evidence, being the document subject to analysis with respect to its adulteration.</p>	RELEVANT
4	A photocopy of police statement about the investigation of Oscar Díaz Muñoz pursued by the Public Prosecutor's Office. Complaint 119-2015. 12th Criminal Prosecutor's Office	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>Contains the statements of those investigated, among them, the former Justices Eto Cruz, Mesía Ramírez, and the complainants.</p>	RELEVANT
5	A photocopy of December 14, 2015 <i>Velaverde</i> newspaper article on the case of the phantom adviser of the Constitutional Tribunal.	The news story bears on the facts; however, the evidentiary weight to be placed on it is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
6	A photocopy of newspaper article	The news story bears on the facts;	RELEVANT

	in <i>Exitosa</i> from July 1, 2015, revealing that the supervisory body and President of the Constitutional Tribunal failed to investigate the scandalous case of the fraudulent vote.	however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	[illegible seal]
7	A photocopy of <i>La Voz de Lima</i> newspaper article, "Land reform in the country of chaos," July 2015.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
8	A photocopy of the <i>Caretas</i> newspaper article of June 18, 2015, on the press release of the Association of Peruvian Land Reform Bondholders, "Constitutional Tribunal issued unfair resolution, land reform bondholders are left unprotected and prevented from receiving fair payment of land reform debt."	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
9	A photocopy of the April 25, 2015, <i>Exitosa</i> newspaper article "Scandal over judgment tampered with in the TC."	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
10	A photocopy of the <i>Expreso</i> newspaper article "False vote in the TC," January 9, 2016.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
11	A photocopy of the June 26, 2015, <i>Exitosa</i> newspaper article "Urviola has the audacity to tamper with a document to say that that is my vote."	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
12	A photocopy of <i>La Voz de Lima</i> newspaper article, September 2015.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
13	A photocopy of <i>Exitosa</i> newspaper article, November 6, 2016.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
14	A photocopy of <i>Velaverde</i> newspaper article, November 10, 2014.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation,	RELEVANT

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		being illustrative and referential.	
15	A photocopy of <i>Velaverde</i> newspaper article dated March 20, 2017.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
16	A photocopy of <i>Velaverde</i> newspaper article dated October 19, 2015.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
17	A photocopy of <i>Velaverde</i> newspaper article dated April 17, 2017.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
18	A photocopy of <i>Velaverde</i> newspaper article dated January 11, 2016.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
19	A photocopy of <i>La República</i> newspaper article dated April 11, 2017.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
20	A photocopy of <i>Velaverde</i> newspaper article dated November 14, 2016.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
21	A photocopy of <i>Velaverde</i> newspaper article dated March 20, 2017.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT
22	A photocopy of the qualification report of Constitutional Complaint No. 2, declared as a result of the meeting of June 26, 2017.	The news story bears on the facts; however, the evidentiary value that must be assigned is miniscule as it does not provide any new or solid argument for this investigation, being illustrative and referential.	RELEVANT

ANALYSIS OF THE ACCUSED'S EVIDENCE			
No.	Evidence	Analysis	Decision
1	A photocopy of the minutes from the plenary session of the Constitutional Tribunal dated July 9, 2013, used to show that all members of the Constitutional Tribunal, including former	The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the	RELEVANT

	Justice Mesía Ramírez, agreed to postpone the discussion of the case of Land Reform Bonds to the next session on July 16, 2013. (Exhibit-A of the defense).	<p>Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>This evidence allows it to be demonstrated that the session of July 16, 2013, was not a surprise session, but had been agreed to by the full assembly.</p>	[illegible seal]
2	A photocopy of the minutes from the plenary session of the Constitutional Tribunal dated July 16, 2013, which is used to demonstrate that former judge Eto Cruz changed his original finding, and that former Justice Mesía Ramírez participated and signed the minutes, and that it is not true that the latter left from the session. (Exhibit-B of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>On this point, when referring to the session that is the subject of this investigation, the session must be admitted.</p>	RELEVANT
3	A photocopy of a letter dated July 15, 2013, in which former Justice Eto Cruz communicated in writing, with the Secretary-Rapporteur Oscar Díaz Muñoz, to amend his original presentation. (Exhibit-C of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>Although this evidence shows the withdrawal by former judge Eto Cruz of the original draft resolution, we must mention that its evidentiary value is negligible, as it is a private document and is undated.</p>	RELEVANT
4	A photocopy of the prosecutor's record dated May 13, 2015 which is used to prove that the prosecutor's office did not perform a visual inspection. (Exhibit-D of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>This record certifies that the prosecutorial activity was not carried out on the date indicated by the complainant.</p>	RELEVANT
5	List of resolutions of the Constitutional Tribunal with amendments used to show that this is a common practice and accepted by the Constitutional Tribunal. (Exhibit-E of the defense)	The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.	RELEVANT

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		It is intended to minimize [the importance of] any possible tampering with the document, having as its basis the fact that this constitutes a usual practice.	
6	CD containing the interview of former Justice Mesía Ramírez on RPP TV, which would demonstrate his position in favor of the case of the Land Reform Bonds. (Exhibit-F of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>This interview does not address the subject that is under investigation, nor does it make any further pronouncement on the alleged falsification of the resolution.</p>	NOT RELEVANT
7	A photocopy of the letter of former Justice Mesía Ramírez, which would prove that he formulated the annulling of the resolution dated July 16, 2013 on July 22, 2013. (Exhibit-G of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>It is related to this investigation, and demonstrates the response to the claim made in writing by former Justice Mesía Ramírez.</p>	RELEVANT
8	A photocopy of a letter dated August 1, 2013 sent by the accused to former Justice Mesía Ramírez indicating that null and void finding that was requested was not meritorious. (Exhibit-H of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>It is related to this investigation, it demonstrates the claim made in writing by former Justice Mesía Ramírez.</p>	RELEVANT
9	A photocopy of the meeting minutes from the plenary session of the Constitutional Tribunal dated August 13, 2013, where all the justices agreed to consider the issue of the Land Reform debt to be closed. (Exhibit-I of the defense)	<p>The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment, posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>It is related to this investigation and it shows a subsequent pronouncement about the act complained about.</p>	RELEVANT
10	A photocopy of fifty-three (53) official documents of the Congressional Administrative Office where the filing of these allegations against the	The imputed act is the use of a falsified resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, designated enforcement of the judgment,	NOT RELEVANT

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	<p>accused for the same case of the Land Reform Bonds is noted for the complainants' lack of legal standing. (Exhibit-J of the defense).</p>	<p>posted on the web site of the Constitutional Tribunal on July 16, 2013, to simulate a tie and thus reach the six obligatory votes, using his deciding vote.</p> <p>The subcommission issued a statement in this respect to the effect that the complaint could proceed.</p>	
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III. RECOMMENDATIONS

The following recommendations are made in light of the foregoing:

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- Demand the statement of former Justice Ernesto Álvarez, because he participated in the plenary session of the Constitutional Tribunal held on July 16, 2013, and also because he approved the draft resolution in question together with former Justices Oscar Urviola and Eto Cruz.
- Demand the statement of former Justice Eto Cruz, because he participated in the plenary session of the Constitutional Tribunal held on July 16, 2013, and because he was appointed Secretary-Rapporteur to create the draft resolution in question.
- Demand the statement of former Justice Carlos Mesía Ramírez, because he participated in the plenary session of the Constitutional Tribunal held on July 16, 2013, and he is the person who is supposedly affected by the commission of the crimes that the former President of the Constitutional Tribunal, Oscar Urviola, is charged with.
- Demand the statement of former Secretary of the Constitutional Tribunal, Oscar Diaz Muñoz, who is currently under investigation for these acts.
- Demand audio or video, if any, of the plenary session of the Constitutional Tribunal held on July 16, 2013.
- Demand from the Public Prosecutor's Office all information related to the investigation carried out against Oscar Diaz Muñoz for the crime of forgery.

IV. Conclusion

Considering the above, the undersigned concludes the following:

4.1. The crimes of forgery, judicial misconduct, and submission of false documents, described in Articles 427, 428, and 418 of the Penal Code, respectively, are imputed to former Justice Oscar Urviola Hani. These crimes would have been committed in creating the Constitutional Tribunal's Resolution handed down in file 022-1996-AI/TC, a resolution referred to as an enforcement of judgment, posted on the Constitutional Tribunal's web site on July 16,

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2013. The conduct that is alleged is the use of the aforementioned allegedly forged resolution of the Constitutional Tribunal handed down in file 022-1996-AI/TC, a resolution referred to as an enforcement of judgment, posted on the Constitutional Tribunal's web site on July 16, 2013, to simulate a tie, and thus to reach the six obligatory votes, and use his deciding vote.

- 4.2. The pertinent evidentiary means are those established in point II of this report.
- 4.3. It is not necessary to require or activate other evidentiary means, as those mentioned in this report are sufficient for the Subcommittee on Constitutional Accusations to proceed to the next stage of the constitutional accusation procedure.

Lima, November 27, 2018

[seal:] CONGRESS OF THE REPUBLIC
REPUBLIC OF PERU
JAVIER VELÁSQUEZ QUESQUÉN
[signature]
JAVIER VELÁSQUEZ QUESQUÉN
CONGRESSIONAL REPRESENTATIVE