



INTER-AMERICAN COURT OF HUMAN RIGHTS

REQUEST FOR AN ADVISORY OPINION

Submitted by the  
STATE OF GUATEMALA

Regarding

**DEMOCRACY AND POLITICAL RIGHTS**

December 6, 2024

*Members of the Inter-American Court of Human Rights:*

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## REQUEST FOR AN ADVISORY OPINION “DEMOCRACY AND POLITICAL RIGHTS”

### I. INTRODUCTION

1. The Republic of Guatemala (hereinafter “State of Guatemala or Guatemala”) is a Member State of the Organization of American States (hereinafter “OAS”) and it ratified the American Convention on Human Rights (hereinafter “ACHR, American Convention or the Convention”) on November 22, 1969.
2. In compliance with the instruction contained on the Official Letter No. 62 dated November 5 2024, signed by the President of the Republic of Guatemala and in accordance with Articles 44, 46 and 149 of the Political Constitution of the Republic of Guatemala<sup>1</sup> that refer to the inherency of human rights, the supremacy of International Law and the way that the State of Guatemala regulates its international relations, fostering respect and defense of human rights for the purpose of strengthening the democratic processes that guarantee mutual and equitable benefits among States, the Office of the Solicitor General appears before the Inter-American Court of Human Rights in order to file this request for an advisory opinion.
3. Of that account, the State of Guatemala, in accordance with Article 64 (1) of the American Convention, which establishes:

#### **“Article 64**

1. *The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the*

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<sup>1</sup> Article 44 of the Political Constitution of the Republic of Guatemala establishes: “*Inherent right of the human person. The rights and guarantees that the Constitution provides do not exclude others that, even if they do not expressly appear in it, are inherent to the human person. Social interest prevails over particular interest. They will be void ipso jure the laws and governmental dispositions or of any other order that diminish, restrict or distort the rights that the Constitution guarantees.*”. Also, Article 46 provides: “*Supremacy of International Law. It establishes the general principle that, in the area of human rights, treaties and conventions accepted and ratified by Guatemala, have supremacy over internal law.*”. And Article 149 of the constitutional text regulates “*Regarding international relations. Guatemala will rule its relations with other States, in accordance with the international principles, rules and practices with the purpose of contributing to peace and freedom, respect and defense of human rights, the strengthening of democratic processes and international institutions that guarantee mutual and equitable benefit among States.*”.

*American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court”.*

4. In that sense, the honorable Inter-American Court of Human Rights (hereinafter “Inter-American Court or Court”) is requested to, in exercise of its advisory function, accept and pronounce on the questions posed on this request for an advisory opinion, which aims to contribute to the consolidation of democracy in the region for the promotion and defense of human rights.

## **II. MOTIVATION AND REGIONAL CONTEXT**

5. The Convention is clear in recognizing the importance of democracy for the establishment of a system for the protection of human rights. Thus, it has provided in its preamble the consolidation of democracy as a fundamental value of American societies. This is a key point in this request for an advisory opinion, because it is through the introduction of democracy on the American Convention, that all States that have signed and ratified it, commit to adopt the democratic provisions that result from its content.
6. Yet, in recent years circumstances have occurred throughout the region that have created a critical and threatening scene for democracy. Such a situation is alarming if it is considered not only the international commitment of States of ensuring solid democratic societies but also of the essential bond between democracy and human rights. To clearly see the alarming overview, it is important to understand democracy not only as a mechanism to exercise political rights, but also as an instrument that makes possible the development and defense of the dignity of the human being.
7. Therefore, promoting and protecting democracy is an essential part for the development of fairer and more inclusive societies in the Americas. The motivation for the requested opinion is justified as of the necessity and utility for the development and consolidation of Inter-

American standards, which play a key role in the promotion of democracy and the protection of the political rights recognized in the Inter-American *corpus juris*.

8. Considering the relevance of the human rights recognized in several international instruments, such as the American Convention, the American Declaration of the Rights and Duties of Man (hereinafter “Declaration or American Declaration”), the Inter-American Democratic Charter (hereinafter “Democratic Charter”) and, the OAS Charter and its reforms implemented through the Protocol of Washington, such as the Inter-American standards on this matter, democracy becomes indispensable as it contributes to prevent violations and arbitrariness. Since these types of violations have multiple offense effects on fundamental rights of individuals and society, affecting democratic processes, reinforcing clear democratic parameters in the political rights scope allows it to define guarantees and principles that contribute to carrying out fair and free elections, generating inclusive political participation.
9. Full exercise of political rights also fosters the active participation of people in political life and decision-making in their countries. This includes the right to vote and be elected in free and fair elections, as well as the right to participate in political organizations and public policymaking. Additionally, political parties, electoral bodies, and other significant actors of the democratic system contribute to the straightening and improvement of electoral organizations.
10. For this reason, Inter-American standards and their application represent an essential tool for States, within the framework of the protection and guarantee of human rights, to make it possible for them to adopt preventive measures in face of the several risks that democracy faces in the region.
11. In the past years, such risks have been a steady concern for American States. For example, the political crisis in 2018 in the Republic of Nicaragua sparked a wave of international condemnations and callings to reestablish the dialogue and respect for human rights. The OAS issued a resolution about the situation in the Republic of Nicaragua<sup>2</sup>, in which it stated, “the

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<sup>2</sup> IACHR. Resolution *Situation of Nicaragua*, adopted by the General Assembly, June 28, 2019. [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=D-014/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=D-014/19) (Accessed November 8, 2024).

concern of the Inter-American community for the **deterioration of democratic institutions** and human rights in Nicaragua and its support for a pacific solution for the political crisis that affects this country for more than a year” (emphasis added).

12. Something similar happened with the political crisis in the Plurinational State of Bolivia in 2019, one that generated a moment of big convulsion and polarization in that country. In this regard, the OAS issued a resolution<sup>3</sup> in which it called to promote national democratic reconciliation and to provide certainty to the Bolivian people about an electoral process with all the democratic guarantees.
13. In 2022, in the Republic of Chile, there was a political and social crisis which led to the establishment of a national dialogue that resulted in a constitutional reform process as a democratic response to the crisis. In this regard, the Inter-American Commission on Human Rights (hereinafter “IACHR or Commission”) issued a report where it decided on the situation of the country and it stated that: “*There was excessive use of force by the State in some registered events*”<sup>4</sup> and that “*the course of actions of democratic States should consider that manifestations do not pose a threat to public order*”<sup>5</sup>.
14. In the case of Guatemala, the Commission issued the Resolution Number 03/2023 in the context of last year general elections, in which it stated its concern about the instrumentalization of the justice system and the serious risks to the rule of law in Guatemala, this because of “*undue and arbitrary actions and interferences ... that threaten the result of the General Elections results and the transition process of the Presidency...*”<sup>6</sup>, this document included a series of recommendations among which it urged all public powers to guarantee observance of constitutional order.

<sup>3</sup> IACHR. *Resolution Situation of Bolivia*, adopted by OAS Permanent Council on November 20, 2019. [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=D-025/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=D-025/19) (Accessed November 8, 2024).

<sup>4</sup> IACHR. *Report Situation of Human Rights in Chile*. January 2th, 2022. [https://www.oas.org/es/cidh/informes/pdfs/2022\\_chile.pdf](https://www.oas.org/es/cidh/informes/pdfs/2022_chile.pdf) (Accessed November 8, 2024)

<sup>5</sup> Loc Cit.

<sup>6</sup> IACHR. Resolution No. 3/2023, *Human Rights, the instrumentalization of the justice system and the serious risks to the Rule of Law in Guatemala*, dated December 10, 2023. <https://www.oas.org/en/iachr/decisions/2023/Res-3-23-EN.pdf> (Accessed November 8, 2024)

15. Thus, it is pointed that the defense and restauration of the democratic system in face of political and political-electoral crisis in America has been a continued topic in the past years, being an important matter for the region.
16. Therefore, it is important to recall that democracy is a broad concept in international law and human rights field. In this respect, author Daniel García San José refers that “*Democracy in International Law is an identifiable concept as of three vectors: legitimacy of the authorities, the intangibility of human rights and the principle of accountability*”<sup>7</sup>. Additionally, bodies of international law have also made statements regarding democracy and human rights. Meanwhile, the United Nations has stated that, although it does not propose a particular model of government, it is necessary to promote democratic governance for human development, given the importance of democracy in pursuing an environment that respects fundamental freedoms and human rights<sup>8</sup>.
17. In the Inter-American human rights protection system of human rights, democracy has taken a key role in the creation of regional instruments. The Democratic Charter in its Article 1 establishes that: “*The peoples of the Americas **have a right to democracy** and their governments have an obligation to promote and defend it.*” (Emphasis added), and as the Democratic Charter is an interpretative text of the Convention<sup>9</sup>, it poses questions about this right within the content of the Convention.
18. Besides, Article 26 of the ACHR provides: “*The States Parties undertake to adopt measures, both internally and through international cooperation...with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights...set forth in the Charter of the Organization of American States.*”. Said Charter states in its recitals the following: “*Convinced that representative democracy is an **indispensable condition** for the stability, peace and development of the region*” (emphasis added) and that in Article 2 letter b) of the referred instrument, it expressly recognizes as one of its purposes: “*b) **To promote and***

<sup>7</sup> Daniel García. The concept of democracy in international law, Universidad Autónoma de Madrid Magazine. Page 76. <https://revistas.uam.es/revistajuridica/Article/download/6123/6585/0> (Accessed November 8, 2024).

<sup>8</sup> United Nations. Global Issues, Democracy. <https://www.un.org/en/global-issues/democracy> (Accessed on November 8, 2024)

<sup>9</sup> Inter-American Court. Advisory Opinion OC-22/16, February 26, 2016. Requested by the Republic of Panama. [https://www.corteidh.or.cr/docs/opiniones/seriea\\_22\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_22_ing.pdf) (Accessed November 8, 2024).

consolidate representative democracy, with due respect for the principle of nonintervention” (emphasis added).

19. Similarly, Article 28 of the American Declaration determines: *“The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy”* (emphasis added), and in that sense, the Democratic Charter states: *“Democracy is indispensable for the effective exercise of fundamental freedoms and human rights”* (emphasis added).
20. Such importance has been materialized by the Inter-American Court in different opinions, such as Advisory Opinion OC-8/87, in which it considered that *“In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad.”*<sup>10</sup>. The above mentioned illustrates the dimension that the Inter-American Court has given to democracy and its close relation to human rights and rule of law.
21. Consequently, democracy acquires a relevant level for the region, as it turns out to be the cornerstone for respect and protection of human rights, that is why it is urgent to address the risks and democratic crises that different countries have faced in past years, as well the pending challenges.
22. In that order, at a regional level several efforts have been developed to create mechanisms of protection for democratic systems. In 1998, the Republic of Argentina, the Federative Republic of Brazil, Republic of Paraguay and the Oriental Republic of Uruguay, in their capacity as member states of the Southern Common Market, just as the Plurinational State of Bolivia and the Republic of Chile, adopted the Ushuaia Protocol on Democratic Commitment, by means of which mutual cooperation was consolidated for the promotion an protection of democracy, foreseeing the suspension of those signing States that did not respect democratic principles.

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<sup>10</sup> Inter-American Court. Advisory Opinion OC-8/87, January 30, 1987. Requested by the Inter-American Commission on Human Rights. [https://www.corteidh.or.cr/docs/opiniones/seriea\\_08\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_08_ing.pdf) (Accessed November 8, 2024).



23. In that account, Article 1 of the Additional Protocol to the Constitutive Treaty of the Union of South American Nations on Commitment to Democracy, stipulates that in cases of “[...] *breach or threat to the democratic order, violation of constitutional order or any situation that risks the legitimate exercise of power and the force of democratic values and principles*”<sup>11</sup> a Chief of State Council assembled in an extraordinary meeting may apply measures with the objective of maintaining the democratic order.
24. In addition, there are other instruments adopted by Member States of the IASHR that in the context of cooperation and coordination, have recognized democracy as a right. An example of this is established in Article 13 of the Andean Charter for the Promotion and Protection of Human Rights<sup>12</sup>.
25. It is important to point out that the promotion, defense and consolidation of democracy constitute a rule of regional customary law, as confirmed by the International Court of Justice<sup>13</sup>. The aforementioned, under the parameter fixed by the International Law Commission<sup>14</sup>, by means of which it can be set that there is a general accepted practice that recognizes democracy as an indispensable vehicle for the observance and guarantee of human rights in the region.
26. With the purpose of strengthening the mentioned above, it is stated that majority of States of the Americas have adopted the inclusion of the called “democratic clause” as a practice within the framework of their relations, including the trade ones. This clause was initially motivated by the European Union as a regional policy towards third States with which it has relations, understanding it as “[...] *a legal instrument that is inserted in the text of the treaty and it implicitly bears the manifestation of will from the parties to observe and promote, in their intern*

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<sup>11</sup> Additional Protocol to the Constitutive Treaty of the Union of South American Nations on Commitment to Democracy, Article 1.

<sup>12</sup>The Andean Presidential Council is integrated by Bolivia, Colombia, Ecuador, Peru and Venezuela. Andean Charter for the Promotion and Protection of Human Rights. Article 13. “**The Andean peoples have a right to democracy** and their governments have the obligation to promote and defend it, in order to achieve full exercise of all civil and political rights, economic, social and cultural rights, and the right to development.” (Emphasis added).

<sup>13</sup> International Court of Justice. *Case concerning military and paramilitary activities in and against Nicaragua, Nicaragua v. United States of America*. Judgement of 27 June 1986. Page 105, paragraph 199.

<sup>14</sup> International Law Commission. Identification of Customary International Law. Report on the 70<sup>th</sup> Period of Sessions of the International Law Commission. From April 30<sup>th</sup> to June 1<sup>st</sup> and July 2<sup>nd</sup> to August 10, 2018. Pages 126-170. United Nations. <https://bit.ly/3iNsQzy> (Accessed November 8, 2024).

*policies, the democratic principles and fundamental human rights*<sup>15</sup>. Such is the case in America of the current trade relations between the European Union, Ecuador, Peru and Colombia<sup>16</sup>, and with the United Mexican States<sup>17</sup>.

27. However, in regional relations, there are precedents where several American States that include the above-mentioned clause, such as the Additional Protocol to the Framework Agreement of the Pacific Alliance, integrated by the States of Chile, Colombia, Mexico and Peru<sup>18</sup>. Hence, the Inter-American Court may consider that the defense and promotion of democracy in America constitutes a rule of regional customary law.

28. Therefore, Guatemala observes that from the content of the mentioned rules, it can be inferred the existence of a right to democracy for individuals and peoples of the Americas, given that democracy is recognized as crucial for the stability, peace and development of the region, as well as for the effective exercise of fundamental freedoms and human rights.

29. It is pertinent to mention that States have an obligation to protect and promote democracy. Thus, within the framework of progressive development of the full effectiveness of rights, the question arises as to whether democracy, in addition to being a system, can be defined as a human right protected by the American Convention, in light of the content of the OAS Charter and the American Declaration in accordance with the interpretative parameters of the Democratic Charter.

30. Accordingly, the questions posed below are primarily motivated by the dispositions that inspire the IAHRs. This is with a specific approach of developing the States' obligations to promote and protect representative democracy. For this reason, the present request is justified in the

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<sup>15</sup> Francisco Campos. The European Union-Mexico democratic clause: its importance in the field of human rights. *Internaciones Magazine*. (México, Year 5, No. 15, 2018) Page 227.

<sup>16</sup> European Union-Colombia-Ecuador-Peru Trade Agreement. <https://trade.ec.europa.eu/access-to-markets/en/content/eu-colombia-peru-ecuador-trade-agreement> (Accessed November 8, 2024)

<sup>17</sup> Global Agreement European Union-Mexico. <https://trade.ec.europa.eu/access-to-markets/en/content/eu-mexico-global-agreement> (Accessed November 8, 2024).

<sup>18</sup> Additional Protocol to the Framework Agreement of the Pacific Alliance. [https://www.subrei.gob.cl/docs/default-source/acuerdos/alianza/capitulos/protocolo\\_adicional-al\\_acuerdo\\_marco\\_de\\_ap\\_completo.pdf](https://www.subrei.gob.cl/docs/default-source/acuerdos/alianza/capitulos/protocolo_adicional-al_acuerdo_marco_de_ap_completo.pdf) (Accessed November 8, 2024).

usefulness that the Inter-American Court opinion would have in achieving these objectives on the basis of clear parameters and standards.

### III. QUESTION

31. In light of international law, the American Convention on Human Rights, the Charter of the Organization of American States, the Inter-American Democratic Charter, the American Declaration of the Rights and Duties of Man and other applicable instruments, the following question arises:

Are States obliged to guarantee and promote democracy as a human right protected by the American Convention on Human Rights, as a means for social, political and economic development and the effective exercise of human rights; or, under both assumptions?

32. If an opinion is obtained regarding the obligations of States to guarantee and promote democracy either as a human right protected by the American Convention on Human Rights or as a social, political and economic system, it is considered essential to address the following secondary questions that break down and deepen these obligations, in order to obtain a comprehensive answer to the main question.

#### Sub-block A: Democracy as a human right

33. Assuming that States do indeed have an obligation to guarantee and promote democracy as a human right protected by the American Convention on Human Rights, the following questions arise:

34. Recognizing the autonomy of the human right to democracy, what is its scope of protection in light of the American Convention on Human Rights? In addition, the question arises as to whether a violation to the human right to democracy would have multiple offensive effects related to other rights contained in the American Convention on Human Rights? Consequently,

what standards should States implement to guarantee, respect and promote the human right to democracy?

35. In relation to its exercise, the human right to democracy, protected by the American Convention on Human Rights, is it subject to protection in the individual sphere, in the collective one, or, in both? In that sense, if subject to protection in its collective sphere, the right to democracy, in light of Article 1 of the Inter-American Democratic Charter, can a society or a people be considered a victim of the violation of the right to democracy?
36. In light of international law and the Inter-American Court of Human Rights case law, which admits State measures that restrict rights only if they are necessary in a democratic society, is it compatible with the American Convention on Human Rights that States implement measures or actions that restrict the human right to democracy? If so, under what assumptions?

#### **Sub-block B: Democracy as a political and social organization**

37. Under the assumption that States have the obligation of guaranteeing and promoting democracy as a means for social, political and economic development and the effective exercise of human rights, the following questions arise:
38. In the light of the American Convention on Human Rights, is the defense and promotion of democracy an obligation for States? If so, what affirmative measures are the States obliged to implement to promote and guarantee democracy? And with the purpose of promoting democracy, is it an obligation of States to guarantee gender equality in nominations and public offices, in light of Article 23 and 24 of the American Convention on Human Rights? Also, is compulsory education on human rights at all educational levels with the purpose of consolidating democracy, compatible with the American Convention on Human Rights?
39. As part of State obligations of guaranteeing democracy, is the guarantee of judicial or administrative independence attributable to all electoral bodies, whether they are permanent

or temporary and whether of their judicial or administrative nature? In that sense, what standards should States adopt to guarantee the independence of electoral bodies in the promotion and defense of a democratic system? And in the specific context of electoral processes, is it an obligation of the States to implement actions to provide enhanced protection for electoral bodies and their personnel?

40. In the specific context of electoral institutions, can public protests, posts on social networks and mass media with inaccurate content or with content motivating to prevent the alternation in power, materialize a change in the independence of electoral bodies? And in order to not infringe the freedom of demonstration and speech of citizens, what actions should States implement to guarantee the rights of the members of electoral bodies, contained in Articles 1,5,8 and 11 of the American Convention on Human Rights? Additionally, what standards should States implement to prevent violence, hate speech and misinformation on social networks and mass media directly related to electoral processes contexts and the democratic system of a country?
41. Furthermore, what is the importance and role of political parties in a democratic system? On this account, what are the States obligations to guarantee the multiple political party system? In light of the joint interpretation of Articles 16 and 23 of the American Convention on Human Rights, what standards should the States adopt to protect political parties as vehicles for the exercise of rights? In the same vein, what standards should judicial or administrative authorities of States Parties to the American Convention on Human Rights observe to guarantee the freedom of association of people in the processes of registration and cancellation of political parties? And finally, is a democratic system without political parties or failing that, a single-party system, compatible with the content of the American Convention on Human Rights?

#### IV. SPECIFIC CONSIDERATIONS

##### A. Specific considerations about the questions of sub block A, related to democracy as a human right

42. The American Convention on Human Rights states in its preamble that States in the region have the “[...] *intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man*”<sup>19</sup>. It also includes that the interpretation of the content of the Convention should not exclude “[...] *other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government*”<sup>20</sup>. These considerations are in line with the content of other regional instruments relevant to the protection system, such as the Charter of the Organization of American States<sup>21</sup>, the Inter-American Democratic Charter<sup>22</sup>, the American Declarations of the Rights and Duties of Man and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter “Protocol of San Salvador”).

43. The Inter-American Court of Human Rights, in its capacity as regional contentious court, has complemented the above-mentioned instruments through extensive pronouncements about the prerogatives in favor of human rights that come from consolidating democratic societies. Nevertheless, democracy has gradually progressed to the point that it is possible that its meaning may evolve from its basic conception as a means of development to one in which it is constituted as an essential element to ensure an elevation of the conditions for the dignified development of the human being. Meaning that it has overcome the raise expectations and democracy, as a concept and social reality, represents today an essential component for the protection and guarantee of human rights.

<sup>19</sup> OAS. American Convention on Human Rights, adopted November 22, 1969. First paragraph of the preamble.

<sup>20</sup> Ibid. Article 29, Restrictions regarding interpretation.

<sup>21</sup> OAS. Charter of the Organization of American States, signed in Bogotá in 1948. Third paragraph of the preamble: “*Convinced that representative democracy is an indispensable condition for the stability, peace and development of the region*”.

<sup>22</sup> OAS. Inter-American Democratic Charter, signed on September 11, 2001. Article 1: “*The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political and economic development of the peoples of the Americas.*”.

44. In this regard, one of the theses consulted to the Inter-American Court in the first question posed, related to the possible recognition of democracy as a human right, results from a particular circumstance: although the right to democracy does not appear as such in the American Convention on Human Rights, the repeated references to it on international instruments and the close relationship it has with other human rights, makes it necessary to determine whether it should be declared as an independent right within the catalogue of human rights.
45. Likewise, the universal system for the protection of human rights has also been emphatic in the role that democracy means to guarantee peace, the dignified development of the human being and, in general, the enjoyment of human rights<sup>23</sup>. As an example of the aforementioned, the Vienne Declaration and Programme of Action<sup>24</sup> expressly declares democracy as an essential condition for development and respect for human rights and fundamental freedoms in a global scale. In accordance with this statement, the strengthening and defense of a democratic scene is an international requirement for the universe of human rights, which contributes to the question posed in the first sub-block of questions.
46. In relation to the recognition of democracy in the sphere of human rights, doctrine establishes that a human right must contain some elements, such as the determination of its own essence (core of the right) and its protection scope (scope and limits)<sup>25</sup>. In this case, democracy has specific features attributable to the doctrinal model of a human right. In the same vein, if democracy is recognized as a human right, from a doctrinal view, it would be important not only to recognize the core of the right, but also the implication of the scope of protection. Said

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<sup>23</sup> United Nations General Assembly. Universal Declaration of Human Rights, proclaimed on December 10, 1948. Article 29 (2). Similarly: United Nations General Assembly. Convention on the Rights of the Child, approved on November 20, 1989, Article 15 (2). United Nations General Assembly. Convention on the Elimination of All Forms of Discrimination Against Women, approved on December 18, 1979. United Nations Educational, Scientific and Cultural Organization -UNESCO-, Declaration and Action Plan on Education for Peace, Human Rights and Democracy, October 1994.

<sup>24</sup> World Conference on Human Rights, approved on June 25, 1993. Paragraph I (8): *“Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.”*

<sup>25</sup> Barak Aharon. Proportionality (Fundamental Rights and their restrictions), transl. Gonzalo Villa Rosas. (Lima, Peru, Palestra) 2017.

model contributes and complements the international standards set forth in this request, in order to support the validity of the consultation presented before the regional body.

47. In this regard, author Mauricio Herdocia Sacasa has referred that one of the most important bonds between democracy and human rights is that one of the specific elements of democracy (core) is composed by the protection of human rights. Consequently, democracy is constituted as “a system that is self-contained, has relative autonomy and comprises its own components and elements”<sup>26</sup>, circumstances that are also present in human rights.

48. From another doctrinal view, the former Peruvian diplomat Manuel Rodríguez Cuadros notes that democracy currently has acquired a value of universal interest. Also, he conveys that “democracy, in a globalized world has become in a universal value. An inspiration for individuals and peoples. And a political system in continuous evolution. But above all, in a human right”<sup>27</sup> (emphasis added). That is why the author proposes democracy as a human right of purpose, due to the universal nature that comprises it, as an individual right whose bearers (persons) may demand before the State (passive subject) freedom of its exercise (right to vote or access to public office).

49. Meanwhile, the National Commission of Human Rights of Mexico states that the right to democracy “*implicates, among others, the organization and participation of everyone in free and transparent elections, this allows to have governments that besides being representative, are also inclusive and participative, which enhances and strengthens people’s impact in the country’s decision making*”<sup>28</sup>, highlighting the close link existing between democracy as a political system and as human right, through which positive recognition is sought so that both individuals and groups of people can demand its realization and obligation from States.

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<sup>26</sup> Mauricio Herdocia. International Right to Democracy: It exists? Contributions of the OAS Organs and Integration Courts. [https://www.oas.org/es/sla/ddi/docs/publicaciones\\_digital\\_XXXVIII\\_curso\\_derecho\\_internacional\\_2011\\_Mauricio\\_Herdocia\\_Sacasa.pdf](https://www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXXVIII_curso_derecho_internacional_2011_Mauricio_Herdocia_Sacasa.pdf) (Accessed November 11, 2024).

<sup>27</sup> Manuel Rodríguez. The human right to democracy. 2014. Page 215. [https://revistas.upc.edu.co/index.php/derecho\\_realidad/Article/view/4567](https://revistas.upc.edu.co/index.php/derecho_realidad/Article/view/4567) (Accessed November 11, 2024).

<sup>28</sup> National Commission of Human Rights of Mexico. Importance of the right to democracy and CNDH responsibility towards 2024 Electoral Process. Pages 2 and 3. [https://www.cndh.org.mx/sites/default/files/documentos/2024-02/PG\\_017.pdf](https://www.cndh.org.mx/sites/default/files/documentos/2024-02/PG_017.pdf) (Accessed November 11, 2024).



50. Additionally, for the purposes of this analysis the approach of author Manuel Rodriguez is brought up, whereby it establishes that the right to democracy is a human right of purpose. To that end, it is important to consider the Inter-American Court decisions regarding the right to defend democracy, although it is not the same as the right to democracy, it helps to understand in a better way the claim stated. In *López Lone et al. v. Honduras*, the Court determined that *“the right to defend democracy referred to in the preceding section of this judgment constitutes a specific manifestation of the right to take part in public affairs and also includes, at the same time, the exercise of other rights such as freedom of expression and the right of assembly, as will be explained below.”*<sup>29</sup>.

51. From the previous quotation, it is evident that the nature of the right to defend democracy includes, in an unbreakable manner, the exercise of other rights inherent to it. In the case of the right to democracy, it is assumed that it operates in the same way.

52. Additionally, it is illustrative to refer to the right to promote and protect human rights, right that is recognized as such since 1999, through the adoption of a resolution of United Nations Organization in which the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was published<sup>30</sup>. The right to promote and protect rights is of purpose, since it is through it that other human rights are exercised such as freedom of expression, peaceful assembly, association, political rights, effective judicial protection and guarantees, among others<sup>31</sup>.

53. For its part, the right to democracy is directly linked to the state's obligation to respect and guarantee the human rights recognized in the ACHR, as set forth on Article 1 of said international instrument. The way in which this right is related to the above obligation is

<sup>29</sup> Inter-American Court. *Lopez Lone et al. v. Honduras*. Preliminary objection, merits, reparations and costs. Judgement of October 5, 2015. Par. 164. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_302\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_302_ing.pdf) (Accessed November 11, 2024).

<sup>30</sup> United Nations Organization. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Article 1. <https://documents.un.org/doc/undoc/gen/n99/770/89/pdf/n9977089.pdf> (Accessed November 11, 2024).

<sup>31</sup> Marta Gonzáles. *The right to defend human rights as an autonomous right*. Magazine of the Inter-American Institute of Human Rights -IDDH-. (Costa Rica, Vo. 63) 2016. Pages 132 and 133.

calculated taking into consideration that for the exercise of any human right, the existence of a democratic system is indispensable, as it has been exposed.

54. Therefore, the purpose of the present opinion is to demonstrate that the existence of democracy as a system for the enjoyment of rights is not enough, but that with the recognition of the right to democracy, it acquires a greater dimension of protection with which, for example, its exercise will not be subject to being suspended (ACHR's Article 29). Equally, it is a right that assists not only individuals but also societies, since it allows them to take part in the conduct of public affairs, either by running for office or voting for it, or even, by generating debate for the construction of a democratic society.

55. Both the doctrinal model for the construction of a right and the notions of democracy from the view of a human right, are contributions that feed the proposed idea as they introduce rendering scenarios that go beyond the legal rule. Meaning, that they also evaluate the academic, historic, social and political considerations that revolve around democracy today and that contribute to confirm democracy as a right that because of its universal, particular and interrelated with other human rights nature, could be protected by the American Convention on Human Rights and the other regional instruments that were submitted to this request.

56. On the other hand, the considerations that the Inter-American Court has done regarding the right to truth<sup>32</sup> are important for the analysis of the questions posed. As of repeated decisions the Inter-American body has recognized the capacity of the right to the truth as a human right, implicitly contained in the American Convention. The case law has based this criterion on two assumptions: the extent of the right and the impact of its violation with other human rights. In *Tabares Toro et al. v. Colombia*, the Court expressed "*the autonomy and broad nature of the right to truth, which is not established explicitly in the American Convention but is linked to*

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<sup>32</sup> OAS. Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights: "Protocol of San Salvador", signed on November 1, 1988. Fifth paragraph of the preamble, Article 5: "*The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.*".

several of its provisions.”<sup>33</sup>. In the same vein, in *Guzmán Medina et al. v. Colombia* the same regional court referred that “*The right to the truth has autonomy because it is broad-based and its violation may infringe different rights contained in the American Convention ...*”<sup>34</sup>. Meaning, as both assumptions are interrelated, the broad nature of the right is displayed through the connection with the provisions of the American Convention and the multiple offensive impact that its violation can have regarding other rights.

57. Moreover, the Inter-American Court established based on case law, the construction of the autonomy of the right to the truth through a clear and precise identification of its implications and effects, as a guarantee of its harmonic exercise with the catalogue of rights and provisions contained in the *corpus juris* of the regional system. That way, in the case *Members and Militants of the Patriotic Union v. Colombia*, when recognizing the right to the truth, it also introduced “*the dual dimension of the right to the truth, which takes the form of an individual right to know the truth for the victims and their next of kin, as well as a right of society as a whole.*”<sup>35</sup>, circumstance that is relevant because from it the Court declared that “*The State is responsible for the violation of the rights to judicial guarantees and to judicial protection ... to the detriment of the persons named and of society in general, the State violated the right to know the truth...*”<sup>36</sup> (emphasis added). The importance of the recognition of the autonomy of this human right is not limited to a mere interpretative argument, but it seeks a further scope by implying a declaration of international responsibility.

58. In relation with the case study associated to this request of opinion, the Inter-American Court has stated in repeated occasions that “*the interdependence of democracy, rule of law and protection of human rights is the basis of the system of which the Convention forms part and*

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<sup>33</sup> Inter-American Court. Case *Tabares Toro et al. v. Colombia*. Merits, reparations and costs. Judgement of May 23, 2023. Series C, No. 491. Par. 87. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_491\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_491_ing.pdf) (Accessed November 11, 2024)

<sup>34</sup> Inter-American Court. Case *Guzmán Medina et al. v. Colombia*. Merits, reparations and costs. Judgement of August 23, 2023. Series C, No. 495. Par. 93. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_495\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_495_ing.pdf) (Accessed November 11, 2024). Similarly: Inter-American Court. Case *Núñez Naranjo et. al. v. Ecuador*. Merits, Reparations and Costs. Judgment of May 23, 2023. Series C, No. 492. Par. 110.

<sup>35</sup> Inter-American Court. Case *Members and Militants of the Patriotic Union v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022. Series c, No. 455. Par. 479. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_455\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_455_esp.pdf) (Accessed November 11, 2024)

<sup>36</sup> *Ibid.* Resolutive Point No. 19.

that a principal objective of a democracy must be respect for the rights of minorities.”<sup>37</sup>. In addition, “The democratic legitimacy of specific facts in a society is limited by the norms of protection of human rights recognized in international treaties, such as the American Convention ... in cases of serious violations of nonrevocable norms of International Law, the protection of human rights constitutes an impassable limit to the rule of the majority, that is, to the forum of the “possible to be decided” by the majorities in the democratic instance”<sup>38</sup>. Besides, both the Inter-American Court and Commission, have referred about how the violation of political rights<sup>39</sup>, right of association<sup>40</sup>, protest<sup>41</sup>, freedom of speech<sup>42</sup>, judicial protection, among others, are seriously affected by the failure to provide democratic scenarios<sup>43</sup>. The foregoing proposes a scenario whereby if democracy is threatened (violation of its essential

<sup>37</sup> Inter-American Court. Advisory Opinion OC-29/22 of May 30, 2022. Requested by the Inter-American Commission on Human Rights. Differentiated Approaches with respect to certain groups of persons deprived of liberty. Par. 38. [https://www.corteidh.or.cr/docs/opiniones/seriea\\_29\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_29_eng.pdf) (Accessed November 11, 2024). Similarly, Inter-American Court. Case *Baraona Bray v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2022. Series C No. 481, Par. 89. Inter-American Court, Case *Moya Chacón et al. V. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 23, 2022. Series C No. 451, Par. 64.

<sup>38</sup> Inter-American Court. Case *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 2011. Series C, No. 221. Par. 239. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_221\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf) (Accessed November 11, 2024).

<sup>39</sup> Inter-American Court. Case *Petro Urrego v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C, No. 406. Par. 93. (Accessed November 11, 2024). Similarly: Inter-American Court. Case *San Miguel Sosa et. Al v. Venezuela*. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348. Inter-American Court. Case *López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C, No. 302. Inter-American Court. *Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C, No. 212. Inter-American Court. *Cas Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C, No. 213. Par. 172.

<sup>40</sup> Op. Cit. Case *López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Similarly: Inter-American Court. Case *Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C, No. 213. Par. 172.

<sup>41</sup> Ibid. Par. 160.

<sup>42</sup> Inter-American Court. Case *Moya Chacón et al. v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 23, 2022. Series C, No. 451. Par. 63. Similarly: Inter-American Court. Case *Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293. Par. 40. Inter-American Court. Case *Tabares Pereira et al. v. Brasil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2023. Series C, No. 507. Par. 155. Inter-American Court. *Leguizamón Zaván et al. V. Paraguay*. Merits, Reparations and Costs. Judgment of November 15, 2022. Series C, No. 473. Par. 72.

<sup>43</sup> IACHR. Report No. 137/99, Case 11.863 *Andrés Aylwin Azócar et al. Chile*. December 27, 199. Par. 38: “has also noted that it is not unusual for the hemisphere’s legal framework to insist on the existence of direct relationship between the exercise of political rights so defined and the concept of democracy as a form of organization of the state, which in turn implies the effective observance of other fundamental human rights.” <https://cidh.oas.org/annualrep/99eng/Merits/Chile11.863.htm> (Accessed November 11, 2024). IACHR. Report No. 29/20, Case 12.865. Merits Report (Publication), *Djamel Ameziiane-United States of America*. April 22, 2020. Par. 207: “that participation in protests and strikes may constitute, in addition to a form of expression, a form of exercising the right of petition to competent authorities ... the Commission reiterates that some types of speech receive special protection in inter-American jurisprudence because of their importance to the exercise of other human rights, or to the consolidation, proper functioning and preservation of democracy ...”. <https://www.oas.org/en/iachr/decisions/2020/uspu12865en.pdf> (Accessed November 11, 2024).

components and elements)<sup>44</sup>, other human rights contained in the Convention are affected. This is because of the close interrelation between democracy and other rights.

59. It is necessary to consider that the universal system has equally expressed the compatibility of democracy with the exercise of other human rights. The International Covenant on Economic, Social and Cultural Rights refers that *“in exercise the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”*<sup>45</sup>. Similarly, the Human Rights Committee has expressed *“that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing...”*<sup>46</sup>.

60. In addition to the foregoing, it should be noted that the Inter-American Commission of Human Rights has ruled that *“Consequently, there is a conception in the inter-American system of the fundamental importance of representative democracy as a legitimate mechanism for achieving the realization of and respect for human rights; and as a human right itself, whose observance and defense was entrusted to the Commission.”*<sup>47</sup>, this positively complements the considerations of the Inter-American Court on the importance of democracy to ensure human dignity in the terms established in the American Convention on Human Rights.

61. That is why, taking into account the interpretative review of the American Convention regarding the right to the truth from an autonomous sphere and the several considerations issued, concerning the impact of democracy in enforcing or affecting other human rights, the State of Guatemala requests this Court to pronounce, regarding the viability of submitting an advisory opinion so that, if so, it establishes the autonomous construction of democracy as a human

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<sup>44</sup> Inter-American Court. Case *Gutiérrez Navas et al. V. Honduras*. Merits, Reparations and Costs. Judgment of November 29, 2023. Par. 103.

<sup>45</sup> United Nations General Assembly. International Covenant on Economic, Social and Cultural Rights, approved on December 16, 1966. Article 4.

<sup>46</sup> Human Rights Council. Resolution approved by the Human Rights Council A/HRC/RES/19/36. April 19, 2012. Second paragraph without number on the resolution.

<sup>47</sup> *Ibid.* Par. 46.

right based on all the international legal structure within the Inter-American protection system of human rights.

62. It is worth mentioning the importance of developing case law for the recognition of rights that, though not specifically included in the American Convention on Human Rights, they result from its content, such as the recent recognition by the Inter-American Court of the right to the truth as an autonomous right<sup>48</sup>, given that at an early stage it was declared the violation of related rights like in the case *Hermanos Gómez Paquiyauri v. Perú*<sup>49</sup> in which the Court ruled: “*that **the State violated Articles 8 and 25**, in combination with Article 1(1) of the Convention, to the detriment of the next of kin of the victim, due to the situation of impunity of the mastermind or masterminds of the facts ...*” (emphasis added). Yet, in similar cases, evolving in its interpretation, it has declared in the cases *Herzog et al. v. Brasil*<sup>50</sup>, *Movilla Galarcio et al. v. Colombia*<sup>51</sup>, and *Guzmán Medina et al. v. Colombia*<sup>52</sup> the violation to **the right to know the truth**, based on the violation of Articles 8(1) and 25 (1) of the American Convention on Human Rights, in combination with Article 1(1) of the Convention.

63. Consequently, the State of Guatemala highlights that even though the Court has recognized violations to political rights in areas that affect democratic processes, there is the possibility to broaden its case law by deciding on the right to democracy in its autonomous form, since regarding the right to know the truth, the Inter-American Court has repeated that “*...although the right to know the truth has been fundamentally framed within the right of access to justice, it is not limited to procedural or judicial truth, and the truth is that this right to the truth has autonomy, since it has a broad nature and its violation can affect different rights contained in the American Convention, depending on the context and circumstances. The right to judicial*

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<sup>48</sup> Case *Herzog et al. V. Brasil*. Judgment of March 15, 2018; Case *Movilla Galarcio et al. v. Colombia*. Judgment of June 22, 2022; and Case *Guzmán Medina et al. v. Colombia*. Judgment of August 23, 2023.

<sup>49</sup> Inter-American Court. Case of the *Gómez Paquiyauri Brothers v. Perú*. Judgment of July 8, 2004. Par. 227. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_110\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_110_ing.pdf) (Accessed November 11, 2024).

<sup>50</sup> Inter-American Court. Case *Herzog et al. V. Brasil*. Judgment of March 15, 2018. Par. 338. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_353\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_353_ing.pdf) (Accessed November 11, 2024).

<sup>51</sup> Inter-American Court. Case *Movilla Galarcio et al. V. Colombia*. Judgment of June 22, 2022. Par. 168. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_452\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_452_ing.pdf) (Accessed November 11, 2024).

<sup>52</sup> Inter-American Court. Case *Guzmán Medina et. al. v. Colombia*. Judgment of August 23, 2023. Par. 100. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_495\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_495_ing.pdf) (Accessed November 11, 2024).



*guarantees and judicial protection, recognized by Articles 8 and 25 of the treaty, or the right of access to information, protected by Article 13.”<sup>53</sup>.*

64. Therefore, if democracy is assigned with the nature of a human right protected by the ACHR, this will imply that member States must recognize their obligation to protect it, demanding them to stop violations of human rights against persons and groups. Likewise, the guarantee of protection requires the adoption of standards that facilitate the enjoyment of this right. So, like other rights, it can have recognition in two main dimensions: one individual and a collective one.

65. The individual sphere refers to the intrinsic rights of each person, which protects them in their direct relationship with the State and other persons. Democracy, as an individual right, implies that everyone has the right to live in democracy and to access its benefits, including the power of not being arbitrary deprived of this possibility.

66. The aforementioned would imply actions tending to break the democratic order in a country, which generates an arbitrary deprivation to all society, not only of their political rights regarding the right to vote for their authorities and to take part of public affairs, but also they restrict society of living in democracy, implying the subtraction of the means to exercise their remaining human rights and fundamental freedoms, as well as restraining economic development<sup>54</sup>, peace and stability<sup>55</sup> to which they are entitled as a society.

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<sup>53</sup> Op. Cit. Inter-American Court. Case Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022. Series c, No. 455 Par. 479. Similarly: Case *Guzmán Medina et. al. v. Colombia*. Judgment of August 23, 2023. Par. 93.

<sup>54</sup> IACHR. 2017 Annual Report, Chapter IV.B: Venezuela. Organization of American States. 2017. Par. 31-37. <https://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.4bVE-en.pdf> (Accessed November 11, 2024). IACHR. 2018 Annual Report, Chapter IV.B: Venezuela. Annual Report of the Inter-American Commission on Human Rights 2018. Organization of American States. 2018. Par.149-160. <https://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.4B.VE-en.pdf> (Accessed November 11, 2024). IACHR. 2018 Annual Report, Chapter IV.B: Cuba. Annual Report of the Inter-American Commission on Human Rights 2018. Organization of American States. 2018. Par. 108-112. <https://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.4b.CU-en.pdf> (Accessed November 11, 2024). IACHR. 2019 Annual Report, Chapter IV.B: Nicaragua. Annual Report of the Inter-American Commission on Human Rights 2019. Organization of American States. 2019. Par. 134-149. <https://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4BNI-en.pdf> (Accessed November 11, 2024).

<sup>55</sup> IACHR. 2017 Annual Report, Chapter IV.B: Venezuela. Organization of American States. 2017. Par.28-30. <https://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.4bVE-en.pdf> (Accessed November 11, 2024).

67. Political crisis scenarios are not the only way there could be arbitrary restrictions to the right of democracy; going beyond the social group, there are also other measures that affect one or more citizens, that in specific cases could be considered a violation to the right to democracy of a person or group of persons, for example, **repressive decrees and laws**<sup>56</sup>, **excessive use of force**<sup>57</sup>, protest repression, **censorship and media control**<sup>58</sup>, **manipulation of the justice system**<sup>59</sup>, etc., which causes the violation of rights embodied in the American Convention on Human Rights and at the same time, generates a direct erosion to democracy.
68. Concerning the collective dimension, it refers to those rights that belong to groups of persons, like communities, indigenous peoples, ethnic or cultural minorities, among others. Facing this regard, the existence of the right of an entire society to not be affected by the rupture of democratic order must be evaluated. This at the same time, is a multiple-offensive situation as it affects the exercise of human rights in a state governed by the rule of law, as it occurred with the right to know the truth. This multiple-offensive situation led to an unknown one: for the first time the 'society in general' was declared victim for the violation of that right. Besides, the Inter-American Court conferred legal consequences to the collective dimension of the right to know the truth, an aspect mentioned on several occasions throughout its jurisprudence, but without conferring it a concrete application<sup>60</sup>.

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<sup>56</sup> IACHR. 2018 Annual Report, Chapter IV.B: Nicaragua. Annual Report of the Inter-American Commission on Human Rights 2018. Organization of American States. 2019. Par. 78-85. <https://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap4B.NI-en.pdf> (Accessed November 11, 2024).

<sup>57</sup> Ibid. Par. 51-63.

<sup>58</sup> Op. Cit. 2017 Annual Report, Chapter IV.B: Venezuela. Organization of American States. 2017. Par. 22-27. IACHR. 2018 Annual Report, Chapter IV.B: Nicaragua. Annual Report of the Inter-American Commission on Human Rights 2018. Organization of American States. 2019. Par. 36-50, 111-140 and 141-147. IACHR. 2018 Annual Report, Chapter IV.B: Cuba. Annual Report of the Inter-American Commission on Human Rights 2018. Organization of American States. 2018. Par. 45-74. IACHR. 2019 Annual Report, Chapter IV.B: Nicaragua. Annual Report of the Inter-American Commission on Human Rights 2019. Organization of American States. 2019. Par. 89-133. <https://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4BNI-en.pdf> (Accessed November 11, 2024). IACHR. 2022 Annual Report, Chapter IV.B: Guatemala. Annual Report of the Inter-American Commission on Human Rights 2022. Organization of American States. 2022. Par. 127-172. [https://www.oas.org/en/iachr/docs/annual/2022/Chapters/10-IA2022\\_Cap\\_4B\\_GU\\_EN.pdf](https://www.oas.org/en/iachr/docs/annual/2022/Chapters/10-IA2022_Cap_4B_GU_EN.pdf) (Accessed November 11, 2024).

<sup>59</sup> IACHR. 2018 Annual Report, Chapter IV.B: Venezuela. Annual Report of the Inter-American Commission on Human Rights 2018. Organization of American States. 2018. Par. 52-57. <https://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap4B.VE-en.pdf> (Accessed November 11, 2024).

<sup>60</sup> Joint Reasoned Vote of Judges Eduardo Ferrer Mac-gregor Poisot and Ricardo C. Pérez Manrique. Case Members and Militants of the Patriotic Union v. Colombia. Judgment of July 27, 2022. Par. 22. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_455\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_455_esp.pdf) (Accessed November 11, 2024).



69. As an example, in *Ricardo Canese v. Paraguay*, the Inter-American Court established that the absolute prohibition of the right to passive suffrage of a person due to their membership to a political party or for ideological motives was contrary to the American Convention on Human Rights, especially because “*The formation of the collective will through the exercise of individual suffrage is nourished by the different options presented by the political parties through the candidates that represent them.*”<sup>61</sup> (emphasis added).
70. From the foregoing it follows that the antidemocratic measures that ban the participation of any candidate or/and political party affect the collective will itself, categorizing that community as a possible victim of a violation of a right that it is entitled as a society. Thus, the measures that distort democracy deteriorate the whole society, making it the object of a breach of the internal constitutional order, and that violation also has a multiple-offensive nature to individual rights, as it directly affects other fundamental rights, such as freedom of association for those members of the excluded party, freedom of association in general, freedom of expression and circulation of ideas and political rights.
71. About it, the European Court of Human Rights (hereinafter “ECHR”) has indicated that “*While precious to all, freedom of expression is particularly important for political parties and their active members. They represent their electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with the freedom of expression of a politician who is a member of an opposition party, like the applicant, call for the closest scrutiny on the Court’s part*”<sup>62</sup> (emphasis added).
72. In the same vein, the case of the political party Yatama in Nicaragua can be quoted. Even though the Court ruled about the evident violation of Articles 23, 24 and 25 of the American Convention, in combination with Articles 1 (1) and 2<sup>63</sup> of the Convention to detriment of the nominated candidates by Yatama party, this based on the unlawful restriction to exercise the

<sup>61</sup> Inter-American Court. Case *Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Par. 90. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_111\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf) (Accessed November 11, 2024).

<sup>62</sup> European Court of Human Rights. Case of *Incal v. Turkey*. Judgment of June 9, 1998. Reports 1998-IV. Par. 46. [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-58197%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-58197%22]) (Accessed November 11, 2024).

<sup>63</sup> Inter-American Court. Case *Yatama v. Nicaragua*. Judgment of June 23, 2005. Preliminary Objections, Merits, Reparations and Costs. Par. 237. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_127\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.pdf) (Accessed November 11, 2024).

right to be elected by provisions of discriminatory nature for these particular persons. Nonetheless, it did not develop possible violations for entire Yatama people, the collective affiliated to the party, the collective of the electorate that wanted to vote for said political party and, above all, all the possible effects on the entire Nicaraguan society whose general will was affected by not allowing free, pluralistic and fair elections with risks to democracy.

73. About the questions that refer to the possible restriction of the human right to democracy, the following comment is made: there is certainty in cases like *Yatama v. Nicaragua*<sup>64</sup> that the restriction to political rights in an individual dimension must be provided by law, not being discriminatory, based on reasonable criteria, serve for useful and timely purpose that deems necessary for a compulsory public interest and be proportional to that objective. When there are several options to achieve this end, the option that least restricts the protected right and keeps the major proportionality to the purpose intended must be chosen<sup>65</sup>. It is necessary to establish with clarity whether these criteria can be applied to restrictions on an entire democratic regimen or whether, on the contrary, given their importance for the exercise of fundamental rights within the framework of rule of law, no interference with democracy is permissible under the parameters of the American Convention on Human Rights.

74. This is relevant, for example, when analyzing the phenomenon of lawfare, which suggests the misuse of legal systems or a belligerent use of law. In the face of these practices, there may be legal state measures but with anti-democratic effects. Hence, it is essential to know the Inter-American standard on the possibility of recognizing the right to democracy from a protective perspective in the face of arbitrary measures that, although legal, can lead to the breakdown of democratic regimes.

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<sup>64</sup> Ibid. Par. 206.

<sup>65</sup> Cfr. Case *Ricardo Canese*, *supra* note 5, par. 96 and 133. Case *Herrera Ulloa*. Judgment of July 2, 2004. Series C, No. 107. Par. 121 and 123. Compulsory Membership of Journalists (Articles 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5. Par. 46. Similarly: Cfr. Eur. Court H.R., Case of *Barthold v. Germany*, Judgement of March 25, 1985. Series A, No. 90. Par. 58. Eur. Court H.R., Case of *Sunday Times v. United Kingdom*, Judgement of April 26, 1979. Series A, No. 30. Par. 59. UN, Human Rights Committee, General Comment No. 27, Freedom of Movement (Article 12) of November 2, 1999, Par. 14 and 15. UN, Human Rights Committee, General Comment No. 25, Right to Participate in Public Affairs, Voting Rights, and the right to Equal Access to Public Service (Article 25) of July 12, 1996. Par. 11, 14, 15 and 16.

75. The concept of **“state interference”** has been developed by the ECHR, which to limit a right analyzes the criterion of what is permissible and justified only if it was **“necessary in a democratic society”**<sup>66</sup>. About it, the ECHR usually uses three requirements to analyze the existence of a true democratic necessity: *“First, that prima facie evidence of **a sufficient risk for democracy** exists; second, that the speeches from the leaders can be imputable to the political party as a whole; and third, that such speeches or acts reflect a non-democratic society.”*<sup>67</sup> (emphasis added).
76. The concept of **“necessary in a democratic society”** was adopted by the Inter-American Court, which has also decided about justifying interferences and restrictions of rights and freedoms under this parameter<sup>68</sup>.
77. Therefore, if only state interferences compatible with a democratic society are admitted, it can be understood that the ECHR and the Inter-American Court recognize a limitation that would imply the protection of the right to democracy against any kind of interference or violation from the State or well, under the interpretation that *“the adoption of such drastic measures as the prohibition or outlawing of an association must be only considered acceptable in a democratic society when the severity of its activities **infringe upon democratic principles**”*<sup>69</sup> (emphasis added). This implies that state interference to the right to democracy of a person, or of a group of members of a political party, for example, would only be justified if its end is to protect the same right to democracy in a broader sense or of a larger group of people, like the electorate or the society itself, against serious situations such as *“using violence to pursue political*

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<sup>66</sup> Judgment of the European Court of Human Rights of February 13, 2003. Case Refah Partisi et. al. v. Turkey (41344/98), quoted in: María Elena Rebato Peña Salvador O. Nava Goma. Case Refah Partisi (Prosperity Party) et. Al. V. Turkey (dissolution of political parties). Claims No. 41340/98, 41343/98 and 41344/98. European Court of Human Rights. Electoral Court of the Judicial Power of the Federation, No. 7 of the Relevant Judgment of Foreign Courts Collection (Mexico City, Mexico) 2017. Page 122. Similarly: Case Handyside v. United Kingdom, 1976; Case Sunday Times v. United Kingdom, 1979; Case Leyla Sahin v. Turkey, 2005 and Case Von Hannover v. Germany, 2012.

<sup>67</sup> Martí Sánchez, Recoder Vallina y Sánchez Sánchez, J. *“Freedom of assembly and association”*, Asamblea: Madrid Assembly Parliamentary Magazine, No. 14, 2006. Pages 270-271. Quoted in: Blanca Guadalupe Lanzas Rota. *European Jurisprudence about political parties*, the dissolution of parties with xenophobic speeches in Europe. Madrid, 2017. Page 16.

<sup>68</sup> Case of the Dismissed Congressional Employees (Aguado-Alfaro et. al.) v. Peru, 2006. Case *García Asto and Ramírez Rojas v. Peru*, 2005; Case *Barreto Leiva v. Venezuela*, 2009; Case *Kimel v. Argentina*, 2008.

<sup>69</sup> Op. Cit. Blanca Guadalupe Lanza Rota. *European Jurisprudence about political parties*. Page 18.

ends...<sup>70</sup> or “*totalitarian movements that, organized as a political party, bring democracy to an end by using the same means it offers...*”<sup>71</sup>, cases in which the ECHR has even recognized the concept of “**absolute necessity**” of the intervention<sup>72</sup>.

78. Complementing the considerations about the possible limitations to which democracy as a right could be subject to, it is important to bring up what was suggested in the doctrinal model for the construction and recognition of a human right. For this purpose, based on the proposed questions, it is intended to establish whether there are limits to the right to democracy, or whether the restrictions apply only to the rights related to the right to democracy, according to what is established by the American Convention and the Inter-American case law<sup>73</sup>. To clearly establish the limits or arrive at the certainty that the right to democracy cannot be restricted under any circumstance, ensures that States may adopt the necessary measures to guarantee legal and institutional protection against state and private abuses, as well as effective and appropriate remedies to defend the human right. So, it is important in the evaluation of democracy as a human right, to determine its scope or its possible absolute nature<sup>74</sup>.

79. Accordingly, the State of Guatemala, through the questions about possible restrictions, looks for this Court to pronounce regarding whether the right to democracy is a human right protected by the Convention and whether it has only an individual dimension or it can be collective,

<sup>70</sup> Op. Cit. Judgment of the European Court of Human Rights, (Section 3a) of January 15, 2013, case (40959/09). Quoted in: Blanca Guadalupe Lanzas Rota. European Jurisprudence about political parties. Page 18.

<sup>71</sup> Op. Cit. Blanca Guadalupe Lanzas Rota. European Jurisprudence about political parties. Page 27.

<sup>72</sup> Op. Cit. Judgment of the European Court of Human Rights, January 13, 2003, Case *Refah Partisi et. al. v. Turkey*, (41344/98). Quoted in: Quoted in: Blanca Guadalupe Lanzas Rota. European Jurisprudence about political parties. Page 27. Cf.: Case *Accion Nacionalista Vasca v. Spain*, 2013 (political party with alleged links with the terrorist group ETA); Case *Féret v. Belgium*, 2009 (hate or intolerance speeches) and Case *Refah Partisi et. al. v. Turkey*, 2003 (political party that supported the abolition of secular system).

<sup>73</sup> Inter-American Court. Case *Arguelles et. Al. v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 288. Par. 226: “any restriction is related to the purpose of the restrictive measure; in other words, that the cause invoked to justify the restriction should be among those permitted by the American Convention and established in specific provisions included in certain rights (for example, to protect public order or public health, in Articles 12(3), 13(2)(b), and 15, among others), or in the norms that establish the legitimate general purposes (for example, “the rights and freedoms of others,” or “the just demands of the general welfare in a democratic society,” both in Article 32). 209 The secondary legal effect of permanent disqualification in this case specifically points to one of the assumptions by which the State may “regulate the exercise of the rights and opportunities” protected by Article 23(1), to wit, “sentencing by a competent court in criminal proceedings.”. Similarly: Inter-American Court. Case *Arguelles et. Al. v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 288. Par. 222. Inter-American Court. Case *Casteñeda Gutman v. United Mexican States*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184. Inter-American Court. Case *Claude Reyes et. al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, Par. 81. Inter-American Court. Case *Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, Par. 125.

<sup>74</sup> Op. Cit. Aharon, Barak. Proportionality (Fundamental rights and their restrictions).

protecting groups of persons or minority groups and even societies, establishing legal certainty as to the scope of such right. Finally, whether state interference is permitted under the principles of legality, necessity and proportionality, or under the ECHR argument that state intervention is only “*necessary in a democratic society*” and that any kind of obstacle to the right to democracy is illegitimate, or whether restrictive measures could be admitted only in the case they protect in a broader measure the same right for a collectivity against situations of serious threats to the democratic regimen under the ECHR concept of a “*absolute necessity*”.

**B. Specific considerations regarding the question of sub-block B related to democracy as a form of political and social organization**

80. Democracy as a form of government in the American context has developed some characteristics that place it in a privileged position, as it is no longer exclusively considered as a form of government, but it has also become a fundamental value for the materialization and respect of human rights.

81. It is possible to interpret the above mentioned derived from Article 1 of the Democratic Charter, which establishes it as a human right declaring that “*The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.*”.

82. The risks and threats to the democratic systems in the context of the Americas are widespread, few countries have managed to institutionalize strong electoral systems, such as Uruguay, Costa Rica, Chile and Argentina<sup>75</sup>. The setbacks that democracies experience, as the author Flavia Freidenberg refer “*are found in different moments, in different countries of the region, in the attitudes and measures that go from the denial of the basic commitments assumed in relation to democratic coexistence...the attacks and manipulation of legal norms and the rule*

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<sup>75</sup> Flavia Freidenberg. The virtuous circle: how to regain the democratic initiative in Latin-America. 1<sup>st</sup> Edition, Argentina, 2024. Page 11.

*of law...These behaviors sometimes come from the elected political power and sometimes from the opposition or the media, and often they become legitimized by the public opinion.”<sup>76</sup>.*

83. Regarding this situation, *“The Court is aware that there is a profound crisis as regards the political parties, the legislatures and those who conduct public affairs in the region, which calls for a thorough and thoughtful debate on political participation and representation, transparency, and the rapprochement 52 of the institutions to the people, in brief, on strengthening and improving democracy.”<sup>77</sup>*. The Inter-American Court considerations demonstrate that, in exercise of its contentious jurisdiction, specific cases have also been submitted in which the democratic crisis that exists in the American continent is evident.

84. On this account, it can be established that democracy as a political system has two areas: on one hand, one that materializes the right that supports both individually and collectively; on the other hand, it represents obligations for the guarantor States, mainly in its promotion and defense against the threats to which it may be exposed, such as those mentioned in previous paragraphs.

85. In addition to the foregoing, it is important to note that in the region, the promotion and defense of democracy has such relevance that it has been enshrined in different international instruments. One of them, the Charter of the Organization of American States, in its Article 2 (b) identifies as an essential principle *“To promote and consolidate representative democracy, with due respect for the principle of nonintervention...”*.

86. In the same line, the OAS Charter materializes the international obligation of States to defend democracy in its Article 9 (a), which foresees the suspension of those members whose democratically constituted government is overthrown by force. Specifically, it expresses that: *“The power to suspend shall be exercised only when such diplomatic initiatives undertaken by the Organization for the purpose of promoting the restoration of representative democracy in*

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<sup>76</sup> Ibid. Page 12.

<sup>77</sup> Inter-American Court. Case *Castañeda Gutman v. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Par. 204. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_184\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_184_ing.pdf) (Accessed December 12, 2024).

*the affected Member State...*. Therefore, the OAS provides actions that facilitate the defense of democracy, even in those cases when it has been interrupted. Such actions have the clear objective of reestablishing the democratic regimen, and with it, ensure the guarantee and protection of human rights.

87. As for the dimension of promotion of democracy, one of its main fields is the academy, like the IACHR expresses in the Inter-American Principles on Academic Freedom and University Autonomy<sup>78</sup> (hereinafter “Inter-American Principles”). This instrument emphasizes “*that academic freedom enables the consolidation of democracy...*”<sup>79</sup>, besides it recognizes “*that knowledge is a public and social good and a fundamental pillar of democracy...*”<sup>80</sup>.

88. In this vein, it is important to refer to what the IACHR established through the Inter-American Principles when determining that human rights education is an international obligation, and within that framework it is specified that all States must implement measures “*including national plans, to ensure that all individuals are educated in human rights in accordance with the American Convention on Human Rights and other applicable international instruments, throughout their lives and that public and private educational institutions develop curricula and programs to guarantee interdisciplinary human rights education...*”<sup>81</sup>.

89. For that reason, in the framework of the obligation of all OAS Member States to promote and consolidate democracy, it is relevant to consider the possibility whether human rights education results in an obligation for States, as it contributes to the promotion and consolidation of democracy.

90. The National Commission of Human Rights of Mexico agrees that “*political representation is a key aspect of the right to democracy, as it allows citizens to take part in the decision-making*

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<sup>78</sup> IACHR. Inter-American Principles on Academic Freedom and University Autonomy, approved during the 182° Period of Sessions, celebrated on December 6-7, 2021. [https://www.oas.org/en/iachr/reports/questionnaires/2021\\_principiosinteramericanos\\_libertadacademica\\_autonomiauniversitaria\\_eng.pdf](https://www.oas.org/en/iachr/reports/questionnaires/2021_principiosinteramericanos_libertadacademica_autonomiauniversitaria_eng.pdf) (Accessed November 12, 2024).

<sup>79</sup> Ibid. Page 1.

<sup>80</sup> Loc. Cit.

<sup>81</sup> Ibid. Principle X, Page 8.



*process, in a plural and diverse manner, building an inclusive and participatory democracy”<sup>82</sup>.*

Another field that has been identified as essential for the promotion and consolidation of democracy is gender equality, as a response to the pending challenge of guaranteeing the full and effective participation of women in the conduct of country’s public affairs. In this regard, UN Women proposes that *“equality in policymaking about the present and future of our societies constitutes a cornerstone of the democratic system”<sup>83</sup>.*

91. In the political area, gender equality in one hand *“seeks to match the participation of women in parliaments through political parties...”<sup>84</sup>* and on the other hand, *“...is therefore a necessary condition for achieving a better gender balance within political parties...”<sup>85</sup>.* Hence, its inclusion in democratic institutions, specifically in political parties, guarantees balance both internally within political parties and externally, by providing in the lists and electoral offer an equal presence of women who are qualified to compete for spaces of representation.

92. Considering the foregoing, the question that arises is whether within the framework of the obligation States have to promote democracy and in the light of the rights contained in the American Convention on Human Rights, specifically Articles 23 and 24, it is possible to shape an international obligation for States consisting in the mandatory inclusion of the gender equality requirement as a condition for access to public office.

93. Besides, it is important to define the role that institutions have in the development of democratic governance, specifically the protection of its officials as democracy and human rights defenders becoming an important matter. This duty of institutional protection is inspired in the elements and components that the Democratic Charter has declared as fundamental for the rise of a democracy, specially the relative to *“access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the*

<sup>82</sup> Op. Cit. National Commission of Human Rights of Mexico. Page 29.

<sup>83</sup> UN Women. Gender Equality: Politics and Institutions, to a parity democracy (available only in Spanish). <https://lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/2018/2/Paridad%20Coleccion%20Guia%20Democracia%20Paritaria%202017.pdf> (Accessed November 12, 2024).

<sup>84</sup> Ibid. Page 10.

<sup>85</sup> Loc. Cit.



*pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.*<sup>86</sup> The above guides institutions, even in a political-electoral environment, which is a scenario introduced in this advisory opinion.

94. The independence and separation of public power as an indispensable element for building a State governed by rule of law and guaranteeing the observation of human rights has been subject of study by the Inter-American Court, which consequently produces democratic strengthening of a society. In this regard, the Inter-American Court has expressed that “*one of the principal purposes of the separation of public powers is indeed to guarantee the independence of judicial authorities.*”<sup>87</sup> Hence, as of Article 8 of the ACHR, the system has adopted a protection directed to jurisdictional bodies which “*includes a guarantee against external pressures, and therefore the State must refrain from undue interference with the Judicial Branch or its members*”<sup>88</sup>.

95. Although the guarantee of judicial independence is intended specifically to jurisdictional bodies with exclusive authority to administer justice, the Inter-American Court in repeated cases has evaluated the work and nature that regional electoral bodies perform and it has found that “*We have seen how efforts have been made in several countries to weaken or appropriate the institutions responsible for organizing elections, or to undermine the independence of judicial bodies specialized in settling disputes on electoral matters. This why the protection of the integrity of boards of elections as a system, and of electoral judges as individuals, is an essential principle for safeguarding the exercise of democracy...*”<sup>89</sup>.

96. In view of the foregoing considerations, the Inter-American Court has issued judgments that seek to address the referred circumstances and to reduce the obstacles that directly challenge the rule of law based in democracy. In this sense, in the case *Aguinaga Aillón v. Ecuador* it expressed that “*the guarantee of judicial independence for electoral organizations is an*

<sup>86</sup> Op. Cit. Inter-American Democratic Charter. Article 3.

<sup>87</sup> Inter-American Court. Case *Aguinaga Aillón v. Ecuador*. Merits, Reparations and Costs. Judgment of January 30, 2023. Series C No. 483. Par. 62. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_483\\_ing.docx](https://www.corteidh.or.cr/docs/casos/articulos/seriec_483_ing.docx) (Accessed November 12, 2024). Similarly: Case *Ríos Ávalos et. al. v. Paraguay*. Merits, Reparations and Costs. Judgment of August 19, 2023. Par. 86.

<sup>88</sup> Ibid. Par. 66.

<sup>89</sup> Ibid. Concurring and Partially Dissenting Opinion, Par. 18.

*indispensable feature of a democratic system, as these institutions are part of the very backbone of the electoral system and are the mechanism for judicial review that guarantees the conduct of free, fair, dependable elections... the protection of judicial independence for electoral organizations serves as a guarantee for the exercise of political rights...<sup>90</sup>.*

97. Although the standard described above creates a sphere of protection for electoral organizations as of Article 8 of the ACHR, related to judicial guarantees, in the region each State has a different electoral organization, which can be integrated by bodies (not precisely members of a court) that exercise a temporal or permanent administrative function, but that issue fundamental decisions to guarantee political rights.

98. From the interpretation that the Inter-American Court has issued so far and in absence of specific judgments, it follows that in case of electoral organizations of administrative nature, these fall outside of the scope of protection connected to judicial independence, which has been fully recognized in favor of electoral courts.

99. The coexistence of both electoral courts and administrative electoral organizations is one of designs of the political-electoral system that some countries in the region have adopted. For example, the case of the Republic of Argentina, which has a National Electoral Chamber<sup>91</sup> (electoral court) and National Electoral Boards<sup>92</sup> (administrative electoral organization). In the case of the United Mexican States, in electoral matters the Electoral Court of the Judicial Body<sup>93</sup> and the National Electoral Institute<sup>94</sup> coexist, both with powers to decide in the matters within their scope of competence, being the judicial for the Court and the administrative for the Institute. In the same vein occurs in the Republic of Ecuador, which recognizes the Electoral Contentious Court<sup>95</sup> and the National Electoral Council<sup>96</sup> as electoral management bodies<sup>97</sup>,

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<sup>90</sup> Ibid. Par. 70.

<sup>91</sup> Rules of the National Electoral Chamber No. 35/72. Articles 3, 11, 12.

<sup>92</sup> State of Argentina, Law 19.945, National Electoral Code. Articles 48 and 52.

<sup>93</sup> Constituent Congress, Political Constitution of the Mexican United States, December 1, 1916. Article 94.

<sup>94</sup> Ibid. Article 35 (VII).

<sup>95</sup> National Constituent Assembly of Ecuador, Constitution of the Republic of Ecuador, September 28, 2008. Articles 217 and 221.

<sup>96</sup> Ibid. Articles 217 and 219.

<sup>97</sup> Ibid. Articles 217 and 219.

following the described dynamic regarding the division of the judicial and administrative jurisdiction in electoral matters.

100. The foregoing scenarios are described for reference only, without prejudice to other member States of the IASHR that have a similar political-electoral organization that may be object of study for the opinion requested to the Inter-American Court, regarding the questions proposed in the request for an advisory opinion.
101. In the case of Guatemala, the electoral system has the Supreme Electoral Court, which is the highest decision body in the matter and despite of not being part of the judicial power, it has powers comparable to the judicial ones. However, there are other bodies like the Register of Citizens (permanent organization) that, from the administrative area, issues fundamental decisions for the exercise of political rights (political party registration, membership, among others) or the Departmental and Municipal Electoral Boards that have temporary legality during the course of a general election process, which provide validity and legitimacy to the results of the universal suffrage<sup>98</sup>.
102. Accordingly, it is meaningful to point out the relevance of electoral organizations-no matter their nature-for guaranteeing and protecting political rights, as democracy itself. In this account, one of the elements that both bodies share, is that their decisions have direct impact in the sphere of individual and collective political rights. Thus, in the specific case of electoral organizations of administrative nature, it is also considered fundamental to grant them protection, taking as a starting point the recognition of their judicial independence, which the Inter-American Court has acknowledged in its case law.
103. In this vein, the Inter-American Court, through its case law, has already identified the need of reinforced protection that electoral bodies demand to protect political rights. In that sense, it stated that *“When other branches of government take over electoral organizations, the institutional framework of democracy is undermined across the board, which poses a risk for*

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<sup>98</sup> National Constituent Assembly of Guatemala, Decree Number 1-85, Electoral and Political Parties Law. Articles 155, 171, 177, 121 and 125.

*the control of political power and the guarantee of human rights... Judicial mechanisms able to safeguard the protection of political rights cease to exist, which is why guarantees of irremovability and stability of electoral judges must be buttressed. The Court therefore deems that any weakening or regression in the guarantees of independence, stability and irremovability of electoral tribunals is a violation of the Convention, as it could produce a systematic, similarly regressive impact on the rule of law, institutional guarantees, and the exercise of fundamental rights overall.”<sup>99</sup>.*

104. Therefore, this request is not limited to calling for a new opinion of the Inter-American Court on the protection of electoral organizations based on the judicial guarantees contained in the ACHR. Instead, it is intended to submit for interpretation whether the electoral bodies of temporary and administrative nature, and other paramount electoral bodies, in defense and promotion of human rights are also subject to such protection, as to complementing and strengthening the purposes of a democratic society, during an electoral process and defend the free exercise of political rights of individuals.

105. Regarding the questions of freedom of expression and protest applied to the judicial independence of the electoral bodies, the following consideration is made: the State of Guatemala is aware that the right to protest must be guaranteed and that any restriction is only justified when strictly proportional measures are adopted to ensure that protests are carried out peacefully, and not to thwart the expression of opinions<sup>100</sup>.

106. Besides, it identifies that the use of new technologies has generated that freedom of expression finds relevance in digital media. In this respect, the Office of the Special Rapporteur for Freedom of Expression has expressed that *“This reality has changed in recent years due to the possibilities offered by the Internet and other digital spaces, which have allowed young*

<sup>99</sup> Op. Cit. Case *Aguinaga Aillón v. Ecuador*. Par. 72.

<sup>100</sup> ECHR. Case *Sergey Kuznetsov v. Russia*, October 23, 2008. Ibid, Case *Galstyan v. Armenia*, November 15, 2007; Ibid. Case *Chorherr v. Austria*, August 25, 1993; Ibid. Case *Women on Waves a.o. v. Portugal*, February 3, 2009; Ibid. Case *Nisbet Ozdemir v. Turkey*, January 19, 2010; quoted in: Joaquín Mejía and Omar Menjivar. Social Protest and Human Rights. <https://www.corteidh.or.cr/tablas/r28045.pdf> (Accessed November 12, 2024).

*people to express themselves and share their points of view on topics of public interest...*<sup>101</sup>.

The Inter-American Court has also stated that “*neither the States nor intermediaries may leak or block Internet content...*”<sup>102</sup>, even it guarantees anonymity<sup>103</sup>. Consequently, it is important to establish limitations for the protection of the right to freedom of expression, as well as actions to prevent that through the exercise of that right occurs a threat or violation to other fundamental rights.

107. Applied to the management of public officials and in this case, electoral bodies and their personnel, Guatemala remarks that opinions and critics from citizens have also been protected under the freedom of speech and the Inter-American Court has mentioned that the violation of this right may be disproportionate or excessive, in relation to the right to honor<sup>104</sup> and referred to “*The opinions expressed... can neither be deemed to be true nor false. As such, an opinion cannot be subjected to sanctions, even more so where it is a value judgment on the actions of a public official in the performance of his duties. In principle, truthfulness or falseness may only be established in respect of facts. Hence, the evidence regarding value judgments may not be examined according to truthfulness requirements.*”<sup>105</sup>.

108. Nevertheless, it also remarks that it is detrimental to the democratic exercise, the misinformation and misuse of social networks and media, for example, the use of bots<sup>106</sup>,

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<sup>101</sup> Office of the Special Rapporteur for Freedom of Expression publishes a new thematic report: Childhood, freedom of expression and the media in the Americas. August 31, 2021. Page 10. <https://www.oas.org/en/iachr/expression/reports/ChildhoodFoEMediaENG.pdf> (Accessed November 12, 2024).

<sup>102</sup> Inter-American Court. International Standards for freedom of expression: Basic Guide for Justice Officials in Latin American. <https://www.corteidh.or.cr/tablas/r37048.pdf> (Accessed November 12, 2024).

<sup>103</sup> Loc. Cit.

<sup>104</sup> Inter-American Court. Case *Kimel v. Argentina*. Judgment of May 2, 2008 (Merits, Reparations and Costs). Par. 94. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_177\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf) (Accessed November 12, 2024).

<sup>105</sup> Cfr. ECHR. Case *Lingens v. Austria*, Judgment of July 8, 1986. Series A No. 103, §46. Quoted in: Case *Kimel v. Argentina*. Judgment of May 2, 2008 (Merits, Reparations and Costs): Par. 93. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_177\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf) (Accessed November 12, 2024).

<sup>106</sup> A bot is a software design to perform automated repeated tasks. Bots are used for different uses, and they can be simple or complicated, depending on its purpose and functionality. Specifically, internet bots are characterized for web surfing and performing specific tasks like indexing websites for search engines (also known as “web crawlers” or “web spiders”) or collecting data for websites for other purposes.

spam<sup>107</sup>, trolls<sup>108</sup> and cyborgs<sup>109</sup>, which are especially common during electoral time<sup>110</sup>. These may generate a broader diffusion of fake news, inaccurate information of electoral processes, provocations, incivility, hate or discriminatory speeches, being relevant the prevention of these practices to safeguard the purity of an electoral process.

109. It can also be mentioned as a precedent, the campaign *Certeza INE 2024* in Mexico, which is “a multidisciplinary initiative from INE whose objective is to fight misinformation in social media during electoral processes. It operates through network and traditional media monitoring to identify fake news and counter them with evidence product of the Institute’s on field deployment”<sup>111</sup>. Launched by the National Electoral Institute of Mexico -INE-, searches to fight electoral misinformation by involving citizens through the phone number where users may report fake news and send information for its verification in different formats, like text, video, audio and images. It can also receive verified information about the electoral process.

110. Likewise, in Brazil it has been implemented the Permanent Program Against Misinformation, within the framework of Electoral Justice, which was established by the Supreme Electoral Court on August 4, 2021. The initiative seeks a permanent fight focused on general elections, “in view of the need of growing and permanent efforts to face the complex, multifactorial and potentially lasting phenomenon of misinformation”<sup>112</sup>.

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<sup>107</sup> The concept “spam” refers to unrequested, unwanted or irrelevant messages that are sent to numerous recipients, generally for advertisement purpose or malware. Spam may appear in different formats and through different platforms, like email, text messages, blog or forum comments, post on social networks and phone calls. Particularly, internet spam is characterized for including unwanted messages or links published on platforms such as Facebook, Twitter, Instagram and other social networks. Spammers may use false accounts or automated to distribute malware links or spam messages.

<sup>108</sup> A troll is a concept used to describe a person that deliberately wants to provoke, disturb or create conflict on online communities. Trolling, as the activity perform by trolls is called, implies using offensive, disturbing or inflammatory messages with the purpose of altering or upsetting other people, divert debate or simply to generate chaos in a digital platform.

<sup>109</sup> A cyborg (abbreviation of “cybernetic organism”) its an entity that combines biological and technological or mechanic components. The concept may refer both to humans as to other organisms that have been modified or augmented through technology for improving or replacing certain functions.

<sup>110</sup> Razvan Vlaicu. Inter-American Development Bank. Is Social Media Remaking Latin American Elections? <https://blogs.iadb.org/ideas-matter/en/is-social-media-remaking-latin-american-elections/> (Accessed November 12, 2024).

<sup>111</sup> National Electoral Institute of Mexico. *Certeza INE 2024*. <https://centraleeleitoral.ine.mx/certeza/> (Accessed November 12, 2024).

<sup>112</sup> Supreme Electoral Court of Brazil. Permanent Program to Fight Against Misinformation within the framework of Electoral Justice, Elections 2022 Strategic Plan. Page. 5. <https://www.justicaeleitoral.jus.br/desinformacao/arquivos/tse-brasil-programa-de-lucha-contra-la-desinformacion-2022-1.pdf> (Accessed November 12, 2024);

111. It must be added that it includes topics like the electronic voting system and the different phases of the electoral process, from a systematic, multidisciplinary and multisectoral approach. *[W]ith the purpose to meet the challenges that misinformation rises to the integrity of the elections and democracy itself, the Program adopts an operational and organizational networked model, based on the mobilization of the Electoral Justice bodies and the formation of strategic associations with multiple actors, including different government agencies, press and fact checking organizations, internet applications and companies, civil society organizations, academy and political parties*<sup>113</sup>.

112. Of that account, it is necessary that the region counts with a clear overview regarding the actions to do to safeguard the electoral bodies and citizens in face of misinformation and misuse of social networks in the framework of democratic processes.

113. Finally, in relation to political parties in the framework of a democratic society, as a starting point, it is relevant to make some considerations about political pluralism. Doctrine<sup>114</sup> and experience<sup>115</sup> reflect that the most lasting and resistant regimes are those that admit conflict in the framework of free expression and competition, considering the long-term dimension the best governments have been those of liberal democratic nature, which legally accept opposed tendencies and have a scarce doctrinaire treatment<sup>116</sup>.

114. Such fundamental freedoms reach protection and guarantee through constituent pluralism of society<sup>117</sup>. Pluralism involves the participation of social groups in democratic life; promotes,

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<sup>113</sup> Inter-American Development Bank. Is Social Media Remaking Latin American Elections? By Razvan Vlaicu. November 3, 2021. <https://blogs.iadb.org/ideas-matter/en/is-social-media-remaking-latin-american-elections/> (Accessed November 12, 2024).

<sup>114</sup> Cfr. Levitsy, Steven and Lucan Way. Competitive Authoritarianism: Hybrid Regimes after the Cold War. New York: Cambridge University Press, 2010. Page 24. “Studies have consistently demonstrated that democracies, on average, reach higher economic development levels, better protection of human rights and better political stability than authoritarian regimes. This is due to democratic institutions that promote accountability, transparency and rule of law, which are essential for sustainable development and good governance”.

<sup>115</sup> Cfr. Levitsy, Steven and Lucan Way. Competitive Authoritarianism: Hybrid Regimes after the Cold War. New York: Cambridge University Press, 2010. Page 99. “Overall, the empirical record indicates that competitive authoritarian regimes generally perform worse economically than democracies. Democratic governments, on average, are less corrupt, more accountable and more likely to pursue sound economic policies than competitive authoritarian regimes. As a result, countries that democratize tend to experience better economic performance and higher levels of development in the long run.”.

<sup>116</sup> Análisis e Investigaciones Magazine. No. 3. Democracy and Political Pluralism, Tribute to Robert Dahl. La Paz, Bolivia. 2014. Page 12.

<sup>117</sup> Díaz Bravo, Enrique. Political Pluralism as a Constitutional Value. The Spanish Treatment. Chilean Magazine of Law and Political Science, Vol. 5, No. 3. Page. 64.



assesses and respects social diversity in all the internal processes of the organization, under the respect for fundamental rights and admits the coexistence of individualities, beliefs, ideological, political, racial, religious positions or of any other nature.

115. There are some doctrinal postures that understand pluralism as a value with a supra-constitutional nature, developing that the unity, coherence and hierarchy of the legal systems of States cannot be conceived as a starting point but rather as a goal to be achieved, which includes building an open society that replaces the methodological monopoly for a methodical pluralism<sup>118</sup>.

116. Applied to the political phenomenon, pluralism involves recognizing that society is formed by groups with their own ideas and interests and that they converge in political life to search agreements with the objective of reaching diversity in the distribution of quotas of power through representativity.

117. Therefore, it is well known that democratic processes allow adopting binding decisions which involve the submission of a group of people. However, the foregoing, the conviction of adopting this methodology is based in the advantages and virtues of the regimen that pursues political pluralism and that even states difference of ideas as something positive for society. The prominent American political scientist Robert Dahl proposes the positive elements of a democracy<sup>119</sup>:

- a) Democracy tends to produce, in general, the best possible system.
- b) Democracy promotes inherent equality.
- c) Democracy is a means leading to the highest possible freedom.
- d) Democracy is a means leading to human development.
- e) Democracy is a means leading to the protection of personal interests.

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<sup>118</sup> Pérez Luño, Antonio. *Fundamental Rights*. Madrid, Tecnos, 2011. Page 179. Quoted in: Julio César Cordón Aguilar. *Democracy, Political Pluralism and Political Parties*. Law School of Mexico Magazine. Volume LXVIII, Number 270, January-April 2018. Page. 154.

<sup>119</sup> Dahl, Robert Alan and Wolfon, Leonardo. *Democracy and its critics*. Argentina, Paidós, 1993. Page 103. Quoted in: *Análisis e Investigaciones Magazine*. No. 3. *Democracy and Political Pluralism, Tribute to Robert Dahl*. La Paz, Bolivia. 2014. Page 75.



118. The factual improvements, historical experience and empirical evidence demonstrate the following: societies that have the strongest democracies or the ones that fit their most important criteria, are in general better than the others. This is clearer at data level, due to several state and international institutions having developed a series of indicators that show positive correlations between the best living standards and greater democratic development<sup>120</sup>. Also, the matter of political culture plays an essential role since a society educated in democratic values and that integrates them in its daily life, has more possibilities of increasing its opportunities of economic development<sup>121</sup>.

119. Meanwhile, inherent equality is an advantage strictly related to pluralism, as it sets different pillars for the exercise of fundamental rights of the human being. In that sense, Dahl proposes that it must be observed that the good of each human being is inherently equal to that of any other. Meaning that life, freedom and happiness of a person are not intrinsically superior or inferior to the life, freedom or happiness of any other. Therefore, all people should be treated as having an equal claim to life<sup>122</sup>.

120. Similarly, democratic freedom is enshrined hand in hand with equality, allowing citizens to access a broader catalogue of freedoms, including freedom of action, information, expression, press, movement, association, religion and worship, commerce and labor. Of that account, without the full force of all civil freedoms, it is less probable that a regimen may be considered as democratic. Thus, *“democracy is a form of government and life that promotes freedom like no other regimen has done throughout human history”*<sup>123</sup>.

121. Based on the foregoing, an environment with equality and full exercise of freedoms in the framework of a democratic process provides the best options to foster human development of people. In fact, *“the different economic and social indicators match in granting the best human*

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<sup>120</sup> Loc. Cit.

<sup>121</sup> Loc. Cit.

<sup>122</sup> Ibid. Page 76.

<sup>123</sup> Loc. Cit.

*development indexes to the countries that have the strongest democratic institutions and an extended political culture related to this form of government”<sup>124</sup>.*

122. The political scientist Dahl contends that *“a democratic government offers, in a far greater measure than any other alternative, a peaceful and organized process by which the majority of citizens can urge it to do what they most want done and avoid it doing what they most want not to be done... a democratic government has to satisfy a minimum group of urgent political concerns”<sup>125</sup>.*

123. In this sense, Dahl addresses the complex matter of democracy as of its most important characteristics, which are the following<sup>126</sup>:

- a) Effective participation
- b) Voting equality
- c) Enlightened understanding
- d) Final control, from citizens, of the agenda
- e) Inclusion

124. The author also states that a necessary, but not enough condition of democracy is the presence of multiple interest groups. He expresses that their importance is held on the following reasons<sup>127</sup>:

- i. Groups are politically more effective than individuals and other more complex organizations, which encourages participation through voluntary partnerships around specific issues.
- ii. Group diversity secures the necessary political competition for a public democratic sphere.

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<sup>124</sup> Ibid. Page 77.

<sup>125</sup> Dahl, Robert Alan and Wolfon, Leonardo. Democracy and its critics. Argentina, Paidós, 1993. Page 117-118. Quoted in: *Análisis e Investigaciones Magazine*. No. 3. Democracy and Political Pluralism, Tribute to Robert Dahl. La Paz, Bolivia. 2014. Page 77.

<sup>126</sup> Dahl, Robert Alan and Wolfon, Leonardo. Democracy and its critics. Argentina, Paidós, 1993. Page 147. Quoted in: *Análisis e Investigaciones Magazine*. No. 3. Democracy and Political Pluralism, Tribute to Robert Dahl. La Paz, Bolivia. 2014. Page 78.

<sup>127</sup> Democracy and Polyarchy in Robert Dahl. University of Santiago de Compostela, 2007. Page 9. Quoted in: *Análisis e Investigaciones Magazine*. No. 3. Democracy and Political Pluralism, Tribute to Robert Dahl. La Paz, Bolivia. 2014. Page 84.

- iii. The negotiation process among groups makes the appearance of extremists difficult and creates a positive environment for alliances.
- iv. Despite groups being single-issue organizations, the overlap participation of citizens in different groups discourages unilateral action.
- v. An extensive network of groups ensures the dissemination of information and the essential communication channels for democracy.

125. However, in Dahl's opinion, group pluralism does not automatically produce a democratic system because it needs to be integrated into a polyarchic political system as an institutional context that, at the same time, must be governed by the criteria that make a democracy possible<sup>128</sup>. Nonetheless, democracy is not limited to political parties: their free existence is a decisive element in democracy.

126. Consequently, equality and freedom as pillars of democracy, only a democratic system offers suitable conditions for expressing and defending lines of thought, differences and ideologies, with respect and tolerance that assure legitimacy and validity of each political option. Thus, political parties, as groups and vehicles of individual political freedoms are the expression of political pluralism as they defend, articulate and represent interests, positions and proposals of different social groups.

127. It is precisely from the convergence of such interests and ideals, with clear consensus efforts that the community endows itself with a constitution, in which the common points and the joint goals to be achieved are outlined, and identifying as a matter of special relevance, the values that sustain, guide and unite the social organization<sup>129</sup>.

128. Under the above idea, it admits that a democratic system turns incompatible with a single-party regime in which it is denied the freedom to opinion and express against the official ideological

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<sup>128</sup> Loc. Cit.

<sup>129</sup> Pérez Luño, Antonio. *Fundamental Rights*. Madrid, Tecnos, 2011. Page 179. Quoted in: Julio César Cordón Aguilar. *Democracy, Political Pluralism and Political Parties*. Law School of Mexico Magazine. Volume LXVIII, Number 270, January-April 2018. Page. 154.

position, the only valid and legal line of political thought, recognized as such, sometimes, even since the constitutional rule<sup>130</sup>.

129. The aforementioned enables fighting dominant ideas that suppress alien positions than those of single party. On the contrary, political pluralism in protection of the freedom that consolidates the democratic system, affirms the right not only to express or comment differently, but also for associating to constitute political organizations that advocate a specific ideology and, thus, also to have access, on an equal footing, to the political contest to obtain the popular vote and then, participate in tasks of government<sup>131</sup>.

130. It is worth noting how political parties fulfill functions from two different perspectives, concerning society and power<sup>132</sup>. From their social perspective, they articulate the demands of social groups, listening to their needs, representing their interests, channeling their support and coordinating such claims and demands with those of other social groups. In all this, political parties, when exercising their representation function, making theirs the needs and claims of the citizens, building from all this, their programmatic proposals and positions, to the point that when they obtain the preference of the electorate, their success reflects the connection between the political ideas and demands of the organization with those from their voters<sup>133</sup>.

131. In fact, the participation of such intermediate groups and individuals on an equal footing is what determines the legitimacy of power through the democratic path, it understood as the *"redirection of the will of the State solely and exclusive to the will of society"*<sup>134</sup>.

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<sup>130</sup> Julio César Cordón Aguilar. Democracy, Political Pluralism and Political Parties. Law School of Mexico Magazine. Volume LXVIII, Number 270, January-April 2018. Page. 156.

<sup>131</sup> Ibid. Page 157.

<sup>132</sup> Freidenberg, Flavia. Political Parties in Electoral Dictionary, Volume II. San Jose, Inter-American Institute of Human Rights. 2017. Page 838. Quoted in: Julio César Cordón Aguilar. Democracy, Political Pluralism and Political Parties. Law School of Mexico Magazine. Volume LXVIII, Number 270, January-April 2018. Page. 157.

<sup>133</sup> Op. Cit. Julio César Cordón Aguilar. Democracy, Political Pluralism and Political Parties. Law School of Mexico Magazine. Volume LXVIII, Number 270, January-April 2018. Page. 157-158.

<sup>134</sup> Pérez, Javier. Constitutional Law Course. Eleventh Edition. Madrid: Marcial Pons, 2007. Page 875. Quoted in: Díaz Bravo, Enrique. Political Pluralism as a Constitutional Value. The Spanish Treatment. Chilean Magazine of Law and Political Science, Vol. 5, No. 3. Page. 64.

132. As to the perspective of access to power, political parties are formed with eminently electoral purposes, they participate in the political process with a view to exercising public functions, for which, to obtain the electorate vote, they propose government programs and policies, which, based on the ideological position defended, they offer to develop upon gaining access to decision-making positions. In this context, once in power, political parties act from the institutional framework of the State<sup>135</sup>.

133. For this reason, political parties have a significative difference that must be taken into consideration. This is closely related to the essential role that they play in democratic systems. As stated in the Electoral Dictionary: *"The element that differentiates political parties from any other type of voluntary association is, precisely, the conquest of power through competitive elections, regardless their size, electoral strength, style, confrontations and/or anti-system strategy"*<sup>136</sup>.

134. Therefore, political parties are an expression of political pluralism, since they defend, articulate and represent interest, positions and proposals from different social groups. These groups, through political parties, can participate freely and on equal terms, in democracy. Thus, political pluralism is enshrined as an essential value of democracy and it is reflected in the freedom of formation, stay in time of the political organizations formed, as well as in the freedom of affiliation of citizens.

135. Considering the foregoing, it should be recalled that, as part of the basic democratic commitments assumed by States, respect for human rights is required, but respect and straightening of the pluralistic system of political parties and organizations is also contemplated<sup>137</sup>. In addition, it is a mandate for IASHR member States to strengthen political parties considering it a priority for democracy.

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<sup>135</sup> Op. Cit. Julio César Cordón Aguilar. Democracy, Political Pluralism and Political Parties. Law School of Mexico Magazine. Volume LXVIII, Number 270. Page. 157.

<sup>136</sup> Electoral Dictionary, Volume I and II. Costa Rica, Inter-American Institute of Human Rights Editorial. Page 835.

<sup>137</sup> Op. Cit. Inter-American Democratic Charter. Article 3.

136. In that sense, it is important to refer to the treatment given to pluralism in democracy by the European Court of Human Rights. In this regard, Professor Tajadura states that *“the ECRH has expressed that the essential characteristics of the democratic society contemplated by the ECRH are pluralism, tolerance and spirit of openness. Pluralism is set, in a certain way, as the all-embracing element for all others. The pluralism recognized by the ECRH has a triple dimension: pluralism of behaviors (Article 8), pluralism of ideas (Articles 9 and 10), and institutional pluralism, as the possibility to participate as a group in public life at a trade union and political levels (Article 11)”*<sup>138</sup>.

137. Specifically, related to political parties, the Inter-American Court has recognized that *“Similarly, just as **the media** are vehicles for freedom of expression, and **trade unions** are instruments for the exercise of the right to freedom of association of workers, **political parties are vehicles** for the exercise of the political rights of citizens. Consequently, actions that prescribe or limit the actions of parties can affect the political rights not only of their members and militants, but of the entire citizenry. Likewise, as vehicles of political rights, States must develop measures to protect political parties, particularly opposition parties.”*<sup>139</sup> (emphasis added).

138. On the basis that a political party is a vehicle for the exercise of political rights and that those rights are indispensable for building a true representative democracy, as it allows and safeguards periodic, free, pluralistic and fair elections, preventing the breakdown of the democratic regimen in States, it is remarked that the Court has recognized that *“the freedom to associate and to pursue certain collective goals are indivisible, so that a limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to achieve its proposed purposes.”*<sup>140</sup>. Hence, Guatemala understands the importance of adapting to the American Convention the legal regime applicable to political

<sup>138</sup> Ibid. Pages 1435 and 1451.

<sup>139</sup> Op. Cit. Inter-American Court. Case Members and Militant of the Patriotic Union v. Colombia. Par. 330.

<sup>140</sup> Op. Cit. Inter-American Court. Advisory Opinion OC-22/16. Par. 96

parties and the State's actions, or those tolerated by it, that could render the rights of association and political rights inoperative in the practice<sup>141</sup>.

139. Consequently, the questions deepen about the positive measures to protect political parties as vehicles for essential individual rights in a democratic regimen. In this context, the Court has pointed that *"the validity of civil and political rights and economic, social and cultural rights have a close relationship and "the different categories of rights constitute an indissoluble whole that finds its basis in the recognition of the dignity of the human person, for which they demand permanent protection and promotion in order to achieve their full validity."* It follows that the protection of economic, social and cultural rights targeted by the Protocol of San Salvador is intended to safeguard not only human dignity but also, and to the same extent, **democracy** and the rights of peoples in this hemisphere."<sup>142</sup> (emphasis added).

140. Considering that the Court has previously stated that the norm (of Article 16 of the Convention) that allows association, is calling on the States do as possible for the free functioning of association, which implies that these collective organizations have the capacity to, for example, create their own statutes, elect their representatives or manage their finances<sup>143</sup>. The foregoing analyzed under the concept of "projection" of the right, which affirms that what the norm does is give a broader scope to the right, implying not only allowing the association, but also guaranteeing its free functioning<sup>144</sup>. Considering these points, it can be noticed that this can be applied to a political party.

141. In this context, Guatemala understands "projection" of Articles 16 and 23 of the Convention, that enshrine the right of individual to associate and exercise political rights, States must allow these organizations to act freely as the norm could give a broader scope to the political rights of individuals, than the mere fact of being able to organize political parties and join them. It achieves this with the minimum means through which States guarantee the full exercise of political rights through the vehicle of the political party. Consequently, the right that the norm

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<sup>141</sup> Loc. Cit.

<sup>142</sup> Ibid. Par. 98.

<sup>143</sup> Op. Cit. Inter-American Court. Advisory Opinion OC-22/16. Par. 91.

<sup>144</sup> Loc. Cit.



enshrines in favor of individuals constitutes the framework through which more specific rights are generated, allowing political parties to be speakers of their members, facilitating through this function a more extensive protection and the effective enjoyment of their rights<sup>145</sup>.

142. Thus, the question that delves in the standards that States must enforce to protect political parties as vehicles for the exercise of political rights, seeks to deepen the possibility to extend the field of protection for the political organizations as they are the means to exercise the rights of this nature. It follows, the Court has expressed about the State's duty, under Article 23 (1) of the Convention, to establish safeguard or protective measures against unlawful pressures and retaliations within the framework of electoral processes or political participation<sup>146</sup>.

143. The purpose of reinforced protection also addresses the eminent need to fight the arbitrary exclusion of candidates or political parties from the electoral race, it done through lawfare or other practices that include subjecting individuals to long judicial proceedings or parties to uncertain legal situations whose effect is to prevent or hinder their political participation.

144. In this regard, the Inter-American Court has expressed that *"Although the principle of equality requires that the reasonable process time and the consequent limitation of rights in terms of precautionary measures be of equal demand by any person, special care must be taken in cases involving public officials. The healthy fight against corruption and the desirable persecution of crimes against public administration should not be perverted into a harmful resource to democracy, by subjecting politically active persons to an uncertain indefinite procedural situation, with the intention of **excluding them from the political democratic battle**. The purpose of fighting corruption in the face of situations prone of transforming the zeal for transparency in the management of public affairs into an anti-democratic instrument, demands extreme care and even shortening the term usually considered reasonable for*

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<sup>145</sup> Cf. Ibid. Par. 92.

<sup>146</sup> Inter-American Court. Case *San Miguel Sosa et. al. V. Venezuela*. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 3481. Quoted in: Inter-American Court of Human Rights Case Law Booklet. No. 20, Page 15, Political Rights. [https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo20\\_2021.pdf](https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo20_2021.pdf)

*proceedings, in defense of democratic health of a State governed by rule of law*<sup>147</sup> (emphasis added).

145. Of the foregoing, it is necessary that the Inter-American Court pronounces regarding the positive obligations that allow States to encourage the creation of suitable conditions for the exercise of political rights of citizens and social groups by means of the exercise of their freedoms and rights through of political parties in their capacity as vehicles.

146. Bearing in mind that human rights are not absolute, specifically those of a political nature, as provided by Article 23 (2) of the American Convention, Guatemala considers it necessary, by means of this request, to obtain certainty through conventional parameters, which must be observed by States when measures being applied represent a limitation of this type of rights.

147. If the Court does not have the above-mentioned parameters, and as the constitutional scientist Jorge Mario García Laguardia, the political party regimen goes from a minimalist position to a maximalist one, understanding it as “...a *thoughtful and extensive treatment of the party regime, which largely was oriented to its control by the public power*”, what besides, as the author states has a disguised authoritarian sense<sup>148</sup>.

148. The author also points that this new position responds to the legal and constitutional manipulation that through “*the requirements – harmless at first sight- of membership, recognition, activities, programs, leadership and finance background, reflected a disguised limitative intention that left in hands of the central government, by means of specific control bodies, the decision on the very existence of the parties and naturally on their activity*”<sup>149</sup>. It is important to bear in mind that Guatemala searching the definition of those parameters is to ensure that the pluralistic of political party system has the sufficient tools to prevent abuses and arbitrary decision by the States.

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<sup>147</sup> Inter-American Court. Case *Andrade Salmón v. Bolivia*. Merits, Reparations and Costs. Judgment of December 1, 2016. Par. 178. Quoted in: Inter-American Court of Human Rights Case Law Booklet. No. 23, Corruption and Human Rights. Page 5.: <https://www.corteidh.or.cr/sitios/libros/todos/docs/cuademillo23.pdf> (Accessed November 12, 2024).

<sup>148</sup> García, Jorge. Constitution and Political Parties in Guatemala: from exclusion to openness. Electoral Supreme Court. Guatemala. 199. Page 18.

<sup>149</sup> Loc. Cit.

149. The foregoing requires to point out the development the ECHR, through its case law, has made on the position of a political party in a democratic society, “*According to the high court, only political parties that defend projects respectful of democracy and human rights, and that do so by equally democratic means, are compatible with the ECHR*”<sup>150</sup>. Following the previous idea, the ECHR has established that those anti-democratic ideologies like the national-socialist or pro-Nazi are not compatible with ECHR Article 10<sup>151</sup>. At the same time, the ECHR has set a limit in face of political parties that justify terrorism as a political means, such as it happened with the Unified Communist Party of Turkey. Lastly, the ECHR does not validate the political projects that exercise fundamentalist ideologies<sup>152</sup>.

150. In relation with the restriction and limitations to the right of association regarding political parties, in specific, about the faculty of States to cancel these, the ECHR applies a restrictive and limited criteria that has to pass the following test: a) it must be provided by law; b) must be justified to achieve concrete and specific purposes; c) must be necessary for a democratic society<sup>153</sup>. Besides that, the action through which the political party is canceled must pass the aforementioned test to be legitimate, “*it is not only that the State at issue could dismantle them, but also by doing so, it is fulfilling a positive obligation in defense of democracy derived from the ECHR*”<sup>154</sup>.

151. It is important to analyze the previous quote because, in the Inter-American experience, there are no judgments where the Inter-American Court have had the opportunity to define the limitations for the freedom of speech in relation to the exercise of political rights, and specifically, when it is a political party that spreads such ideas.

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<sup>150</sup> Op. Cit. Tajadura, Javier. Pages 1437 and 1438.

<sup>151</sup> Judgment of the European Court of Human Rights of January 11, 2000. *New Verlags, GmbH & CoKG v. Austria*. Par. 54. Judgment of the European Court of Human Rights of October 10, 2000, Ibrahim Aksoy: “There is no doubt that declarations aiming...to spread the idea of a superior race cannot benefit from Article 10 of the ECDH, paragraph 63.

<sup>152</sup> Op. Cit. Tajadura, Javier. Pages 1441 and 1442.

<sup>153</sup> Ibid. Page 1446.

<sup>154</sup> Ibid. Page 1445.

152. Nevertheless the above, in the case of the IACHR it does exist pronouncements that refer to the following: *“that ‘governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will’<sup>155</sup>.*

153. From the above, it is evident the democratic and protective nature of human rights which, as in the European system, is also provided in the IASHR. Like the ECHR grants value and force to the mandate to defend democracy, in the IASHR, said purpose is translated in a principle literally enshrined in the Inter-American Democratic Charter<sup>156</sup> and in the OAS Charter<sup>157</sup>, therefore, the Inter-American Court with this advisory opinion could pronounce in relation to the scope that the defense of democracy, as a state obligation, has in the IASHR, defining the specific obligations and its limitations.

154. Guatemala identifies that all mentioned in this section exposes that at the Inter-American level, it exists the need to count with the development of parameters, standards and guarantees applicable to political parties and electoral bodies. This as a genuine answer to counteract the raising authoritarian and anti-rights efforts that exist in the continent, which constitute a real danger to democracy and respect for human rights. For that reason, the pronouncement of this Court is looked for regarding the defense and promotion of democracy as a state obligation with conventional range.

## V. PROVISIONS THAT REQUIRE INTERPRETATION

155. Guatemala using the figure of the advisory opinion established on Article 61 (1) of the American Convention, requests the Inter-American Court to issue an interpretation of the

<sup>155</sup> IACHR. Report No. 297/21. Case 13. 639. Admissibility and Merits (Publication). Yoani María Sánchez Cordero. Cuba. October 30, 2021. Par. 184. <https://www.oas.org/en/iachr/decisions/2021/CBPU13639EN.pdf> (Accessed November 12, 2024).

<sup>156</sup> Op. Cit. General Assembly of the Organization of American States. Inter-American Democratic Charter. Article 1.

<sup>157</sup> Op. Cit. General Assembly of the Organization of American States. Charter of the Organization of American States. Articles 2(b), 3(f), 9(a).

different regional international instruments that clarify, recognize and define positive standards for the development of human rights, considering that the proposed matter originates from a regional issue that constantly threatens the protection of human rights. The following are the provisions in the international instruments from the Inter-American system which are intended to be submitted for interpretation because of this request for an advisory opinion.

156. Although it refers to specific Articles from the American Convention and other international instruments, only in some of the questions that form the proposed blocks, the Court is intended to interpret all the questions posed in the light of the following provisions:

157. The Inter-American Court is requested to interpret the following provisions of the American Convention on Human Rights:

- **First Paragraph** not numbered of the preamble
- **Article 1:** Obligation to respect rights
- **Article 5:** Right to humane treatment
- **Article 8:** Right to a fair trial
- **Article 9:** Freedom from ex post facto laws
- **Article 11:** Right to Privacy
- **Article 13:** Freedom of thought and expression
- **Article 15:** Right of assembly
- **Article 16:** Freedom of association
- **Article 23:** Right to participate in government
- **Article 24:** Right to equal protection
- **Article 25:** Right to judicial protection
- **Article 26:** Progressive development
- **Article 29:** Restrictions regarding interpretation

158. In addition, that the Inter-American Court interprets the following provisions of the Charter of the Organization of American States:

- **Third paragraph** not numbered of the preamble

- **Article 2 (b)**
- **Article 3 (d) and (f)**
- **Article 9 (a) and (d)**
- **Article 47**
- **Article 95 (c) (3)**

159. It is submitted to interpretation of the Inter-American Court the following provisions of the American Declaration of the Rights and Duties of Man:

- **Article XXVIII**

160. In relation with the Inter-American Democratic Charter, it is requested the interpretation of the following provisions:

- **First paragraph** not numbered of the preamble
- **Second paragraph** not numbered of the preamble
- **Eighth paragraph** not numbered of the preamble
- **Twelfth paragraph** not numbered of the preamble
- **Article 1**
- **Article 2**
- **Article 3**
- **Article 7**
- **Article 9**

161. Additionally, that the Inter-American Court interprets the following provision of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights:

- **Third paragraph** not numbered of the preamble
- **Article 3:** Obligation of nondiscrimination
- **Article 5:** Scope of restrictions and limitations
- **Article 13:** Right to education

## VI. COMPETENCE AND ADMISSIBILITY

162. The Rules of Procedure of the Inter-American Court, in their Article 70, establish the following as requirements to admit a request for an advisory opinion: that the requesting organ shall state with precision the specific questions on which the opinion of the Court is being sought, the provisions of the international instruments and treaties of the Inter-American system to be interpreted, the considerations giving rise to the request, and the names and address of the agent or the delegates.

163. Moreover, numeral (3) of said Article adds that:

*“If the advisory opinion is sought by an OAS organ other than the Commission, the request shall also specify how it relates to the sphere of competence of the organ in question, in addition to the information listed in the preceding paragraph.”* (emphasis added).

164. Therefore, in this section, the State of Guatemala will explain each of the considerations in relation to the competence of the Inter-American Court to interpret the provisions brought before it, in support of the specific questions on which the opinion of the Inter-American organ is required. As well, in accordance with jurisprudence and previous opinions issued by the Inter-American Court, it shall be mentioned the compliance with the admissibility requirements of the questions included in this request for an advisory opinion.

### A. Regarding the competence of the Inter-American Court of Human Rights

165. About the competence, the Inter-American Court has stated that *“the advisory function allows it to interpret any norm of the American Convention, without excluding any aspect of it from the scope of interpretation. In this sense, it is clear that because it is the “final interpreter of the*



*American Convention, "20 the Court has competence to issue, with full authority, interpretations of all the provisions of the Convention, including those of a procedural nature."<sup>158</sup>.*

166. Therefore, first, it is indispensable to refer to the competence *ratione materiae* in this request in favor of the Inter-American Court, as this advisory opinion proposes that the American Convention on Human Rights be interpreted in harmony with the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

167. As mentioned above, Article 64 (1) of the American Convention, enables OAS Member States to request an opinion regarding any treaty concerning the protection of human rights in the American States. Thus, being the Inter-American Court of Human Rights the only regional body with the competence to conduct interpretations and issue opinions, it is the only subject with exclusive competence to hear the present request.

168. Additionally, it is remarked that all the instruments referred as provisions submitted to interpretation, are part of the *corpus juris* of the regional protection system on human rights. Besides, previously, the Inter-American Court has stated that it can provide advisory opinions about the Declaration and the Inter-American Democratic Charter, in the framework and within the limits of its competence in relation to the OAS Charter and the American Convention.

169. Now, regarding the Protocol of San Salvador, the regional body has expressed that "*when referring to its authority to provide an opinion on "other treaties concerning the protection of human rights in the States of the Americas is broad and non-restrictive. In general, the advisory jurisdiction of the Court can be exercised with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, whether it be bilateral or multilateral, whatever the principal purpose of such a treaty,*

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<sup>158</sup> Inter-American Court. Advisory Opinion OC-28/21 of June 7, 2021. Par. 26. [https://www.corteidh.or.cr/docs/opiniones/seriea\\_28\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_28_eng.pdf) (Accessed November 12, 2024). Similarly: Advisory Opinion OC-20/09 of September 29, 2009. Par. 18; and Advisory Opinion OC-26/20 of November 9, 2009. Par. 25.

*and whether or not non-Member States of the inter-American system are or have the right to become parties thereto.*"<sup>159</sup>. Is through the aforementioned norm and this criterion of the Inter-American Court that it obtains its competence to hear the two regional instruments mentioned.

170. Although the ratification of an instrument by the requesting body does not imply an obstacle for the admission of an advisory opinion, it is worth expressing that the legitimate interests to submit the previously mentioned instruments it is due that, the State of Guatemala subscribed the Democratic Charter on September 11, 2001, and ratified the Protocol of San Salvador on May 30, 2000. All of them susceptible to the mechanism of interpretation entrusted exclusively to the Inter-American Court.

171. The foregoing reflects that the requesting State has accepted international commitments in defense of the content and human rights recognized in the instruments in question, and that is why a comprehensive legal interpretation may facilitate compliance with its obligations and build a democratic society on the principles and values of the regional protection system on human rights.

172. On the other hand, in relation with the *ratione personae* competence, Article 64 of the American Convention empowers Guatemala, in its capacity as OAS Member State, to request the Inter-American Court the interpretation of the system norms within the material and formal parameters that the instruments in question foresee. Hence, Guatemala has the competence to submit the request for an advisory opinion, and the Inter-American Court has obligatory competence to consider and exam its admissibility.

173. Finally, the Inter-American Court and other OAS bodies that have access to this request, may note that there is no formal or material impediment regarding the competence, for the regional Court, in its capacity as interpreter, to refrain of admitting, processing and answering to the request for an advisory opinion.

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<sup>159</sup> Inter-American Court. Advisory Opinion OC-23/17 of November 15, 2017. Par. 17. [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf) (Accessed November 12, 2024). Similarly: Advisory Opinion OC-27/09 of May 5, 2021. Par. 24

## **B. Regarding the questions proposed in the advisory opinion**

174. In accordance with the process established for the delivery of an advisory opinion, it is foreseen that the Inter-American Court carries out a technical evaluation of the admissibility of the proposed questions.

175. Although the State of Guatemala is subject before the IACHR in several contentious cases that revolve around democracy, the inadmissibility of an advisory opinion on the grounds that it could interfere in a contentious case is ruled off, since when looking the recognition of democracy as a human right, its only purpose is to make visible, from its autonomous nature, its impact on the protection system of human rights, justification that in itself turns enough to assess its comprehensive interpretation at a regional level.

176. On the other hand, the Inter-American Court has stated that the admissibility of an advisory opinion is subject to the capacity of the requesting body to generate precise specific questions that attend a real interpretative objective, whose purpose demonstrates it may generate a potential result in favor of human rights, under the dynamic of a scrutiny in the sense and fundamental purpose of international norms.

177. In that sense, it is important to point out that the purpose of this request for an advisory opinion is to obtain defined parameters for the comprehension of the concept and subsequent exercise of the right to democracy as of an international regulatory integration, due to the worrying political and social situation in the region, which was exposed in the section of general and specific considerations.

178. Consequently, the Inter-American Court may assess that the questions proposed above, were formulated in a precise and clear manner, and besides, they demonstrate the need to obtain a pronouncement from the advisory body, under a factual platform that demands more certainty in the application of international norms related to the human right to democracy, and in the obligations of States as guarantors of human rights.

179. During its admissibility evaluation, the Inter-American Court will not identify elements that hinder the feasibility of this request, as the topic proposed related to the recognition of democracy as a human right, is not directed to get a judgment regarding a specific contentious case; the proposed questions attend precision and clarity standards, being focused on obtaining a practical scope in favor of human rights protection and in determining the obligations of member States of the Inter-American system.

180. With the previous considerations, the State of Guatemala has exposed how the broadly explained and reasoned questions meet the standards for the admissibility of this request. Also, has vanished any condition that may affect the free procedural development of the regional interpretation mechanism promoted.

## VII. REQUESTS

181. Because of the aforementioned, the State of Guatemala respectfully before the honorable Inter-American Court poses the following requests:

- i. Take as presented the request for an advisory opinion in related to “Democracy, Political Rights and Political Parties” proposed by the State of Guatemala, in accordance with Article 64 (1) of the American Convention on Human Rights.
- ii. That the Inter-American Court of Human Rights, accepts its competence to answer the request for an advisory opinion referred, as there are no legal or jurisprudential impediments that limit its study, in accordance with the American Convention on Human Rights and The Rules of Procedure of the Inter-American Court.
- iii. That the Inter-American Court of Human Rights admits this request for an advisory opinion, as it is verified that all formal requirements imposed to the requesting State are fulfilled.

- iv. That eventually, the Inter-American Court delivers its opinion regarding each of the questions proposed in this request.

## **VIII. AGENT DATA**

Name of Agent:

Notification Address:

With our highest expression of consideration for the Judges of the Inter-American Court of Human Rights, respectfully presented on behalf of the State of Guatemala, on December 6, 2024.

**Julio Roberto Saavedra Pinetta**  
Solicitor General of Guatemala