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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

***AMICUS CURIAE BRIEF***  
**FOR THE INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**ON**

**DEMOCRACY AS A HUMAN RIGHT,  
AS A MEANS FOR SOCIAL, POLITICAL AND ECONOMIC  
DEVELOPMENT AND THE EFFECTIVE EXERCISE OF HUMAN  
RIGHTS, OR AS BOTH**

**Adopted by the Venice Commission  
at its 143<sup>rd</sup> Plenary Session  
(online, 13 – 14 June 2025)**

**On the basis of comments by**

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## I. Introduction

1. On 6 December 2024, the Republic of Guatemala submitted to the Secretariat of the Inter-American Court of Human Rights a request for an advisory opinion on democracy and its protection before the Inter-American Human Rights System.<sup>1</sup>

2. By letter of 27 March 2025, Mr Pablo Saavedra Alessandri, Secretary of the Inter-American Court of Human Rights, conveyed to the Venice Commission of the Council of Europe the invitation by the President of the Inter-American Court of Human Rights to submit *written observations on the request in relation to the matters you consider pertinent, and according to your area of expertise or interest*. The President set the deadline to 1 July 2025. On 1 April 2025, the Venice Commission Bureau authorised the preparation of an *amicus curiae* brief for the Inter-American Court of Human Rights to be submitted for the Commission's adoption at the June Plenary Session.

3. Mr Nicos Alivizatos, Ms Paloma Biglino Campos, Mr Srdjan Darmanovic, Ms Hanna Suchocka and Mr Kaarlo Tuori acted as rapporteurs for this opinion.

4. This *Amicus curiae* brief was drafted on the basis of their comments and was adopted by the Venice Commission at its 143<sup>rd</sup> Plenary Session (online, 13-14 June 2025).

## II. Background

5. The Guatemalan government has posed the following interpretative questions to the Inter-American Court of Human Rights:

1. *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?*

Furthermore:

2. *In the light of the American Convention on Human Rights, is the defence 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?*
3. *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 defence 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?*
4. *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?*

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<sup>1</sup> The request submitted by Guatemala can be found at the following link:  
<https://jurisprudencia.corteidh.or.cr/en/vid/1074848299>.

*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?*

5. *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?*

6. The question was motivated by the fact that *“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 the essential bond between democracy and human rights.”*

7. The Venice Commission will provide a response to these questions referring primarily to European standards, mainly the Statute of the Council of Europe, the European Convention on Human Rights (hereinafter ECHR) and the Charter of Fundamental Rights of the European Union (CFREU), as well as on general and country-specific documents adopted by the Commission, such as the Code of Good Practice on Electoral Matters and the Rule of Law Checklist.

### III. Analysis

#### A. Question 1

**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?**

##### 1. Democracy and human rights

8. The notion of democracy is strictly linked with the dynamic evolution of the notion of human rights. As Z. Kędzia points out,<sup>2</sup> “the proposals of how to define “democracy” can be generally grouped in two categories: a) proposals that focus on the substance, where democracy is defined by its source – *the will of the people* and by its purpose – *the common good*, and b) proposals that focus on the procedure.”<sup>3</sup> It is the *substantive* versus the *procedural* concept of democracy.

9. Without entering into the details of the whole evolution of these two concepts, the Venice Commission is of the view that under both the procedural and the substantive approaches, democracy requires that sovereignty resides in the people, that the people govern directly or through freely chosen representatives, and that political decisions are taken in a pluralistic and

<sup>2</sup> Z. Kędzia, Human Rights and Democracy – A Linkage within the United Nations, in: Polis und Kosmopolis. Festschrift für Daniel Thürer, ed. Biaggini, Diggelmann, Kaufmann, Nomos 2015; pp. 385-398.

<sup>3</sup> See D. Thürer, Deliberative Demokratie und Abstimmungsdemokratie, Zur Idee der demokratischen Gerechtigkeit im europäisch-staatlichen Spannungsfeld in: Daniel Thürer, Kosmopolitisches Staatsrecht, Grundidee Gerechtigkeit, Band 1, Zürich/St. Gallen 2005, p. 43.

participatory manner. From both procedural and substantive points of view, democracy always requires respect for fundamental rights, the rule of law, and the separation of powers. Furthermore, local self-government is regarded as an important constituent element of democracy, as affirmed in the Preamble of the European Charter of Local Self-Government,<sup>4</sup> a landmark European treaty aimed at protecting local and regional democracy, which states that “local authorities are one of the main foundations of any democratic regime”.

10. In the past, the link between protection of human rights and support for democracy was not stressed, either at national level or within the United Nations. Article 21 of the UN Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, which is a part of customary international law and has served as a basis for a number of universal and regional human rights treaties, including the International Covenant on Civil and Political Rights, and the European and American Conventions on human rights, states that “*The will of the people shall be the basis of the authority of the government*”, and Article 28 states generally that “*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*”. In these provisions the word “democracy” is not used.

11. The crucial role in changing the concept of relations between both values was played by the United Nations World Conference on Human Rights, held in Vienna in 1993. The Vienna Declaration and Program of Action, adopted as the outcome of this Conference, proclaimed that “*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.*”<sup>5</sup> This formulation strongly emphasizes the strict relationship between democracy and human rights.

12. In 2005 the World Summit Outcome proclaimed that all States recommit themselves “to *actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations, and call upon all parts of the United Nations to promote human rights human rights and fundamental freedoms in accordance with their mandates*”.<sup>6</sup>

13. In its resolutions, the Human Rights Council subsequently reiterated that “democracy is vital for the promotion and protection of all human rights” and that “the interdependence between a functioning democracy, strong and accountable institutions, transparent and inclusive decision-making and effective rule of law is essential for a legitimate and effective Government that is respectful of human rights.”<sup>7</sup>

14. The Preamble to the Charter of the Organisation of American States considers representative democracy as a condition for stability, peace and development in the region, and Article 3 of the same text asserts that it is the basis of the political organisation of the American States.

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<sup>4</sup> Ratified by all Council of Europe members States.

<sup>5</sup> § 8 of the VDPA, Part. I), <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.

<sup>6</sup> Resolution adopted by the General Assembly on 16 September 2005, § 119, <https://digitallibrary.un.org/record/556636/?v=pdf>.

<sup>7</sup> HRC Resolution 19/36, “Human Rights, democracy and the Rule of law”, UN Doc.A/HRC/RES/19/36, § 1.

15. According to the Preamble to the ECHR, fundamental human rights and freedoms are best maintained by "an effective political democracy".<sup>8</sup> In the words of the European Court of Human Rights (hereinafter ECtHR), [d]emocracy constitutes a fundamental element of the "European public order". That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights. The Preamble goes on to affirm that European countries have a common heritage of political traditions, ideals, freedom and the rule of law. This common heritage consists in the underlying values of the Convention; thus, the Court has pointed out on many occasions that the Convention was in fact designed to maintain and promote the ideals and values of a democratic society. In other words, democracy is the only political model contemplated by the Convention and, accordingly, the only one compatible with it (see, among many other examples, *United Communist Party of Turkey and Others*, cited above, § 45; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. [41340/98](#), [41342/98](#), [41343/98](#) and [41344/98](#), § 86, ECHR 2003-II; and, lastly, *Gorzelik and Others v. Poland* [GC], no. [44158/98](#), § 89, ECHR 2004-I).<sup>9</sup>

16. Article 2 of the Treaty on European Union<sup>10</sup> states that the Union is based on the principles of democracy and the rule of law. So does the Preamble to the CFREU.<sup>11</sup>

17. Democracy is now generally considered as a form of political organisation in which sovereignty is vested in the people,<sup>12</sup> which governs directly or through freely chosen representatives,<sup>13</sup> and political decisions are taken in a pluralistic and participatory manner.<sup>14</sup> Furthermore, a "genuine democracy", as a democracy based on the rule of law, requires a system of divided powers. In such system, local and regional authorities play an important role as part of checks and balances, "which forms the backbone of a genuine pluralistic democracy".<sup>15</sup> *The rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and are accordingly of prime importance in the Convention system.*<sup>16</sup> Universal and equal suffrage and secret ballot are the *sine qua non* prerequisites of fair elections. Local self-government must also be exercised by democratically constituted authorities as "the concept of local autonomy also requires local government to express, directly or indirectly, the will of the local population".<sup>17</sup> Furthermore, as the Venice Commission has stressed in its Code of Good practice in electoral matters, "the holding of democratic elections and hence the very existence of democracy are impossible without respect for human rights, particularly the freedom of expression<sup>18</sup> and of the press and the freedom of assembly and association for political purposes, including the creation

<sup>8</sup> ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113 § 3.

<sup>9</sup> ECtHR, *Ždanoka v. Latvia* [GC], no. 58278/00, § 98, ECHR 2006-IV.

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4301855>.

<sup>11</sup> [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>12</sup> The American Declaration of Independence (1776) proclaimed: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed".

<sup>13</sup> Venice Commission, Opinion on the legal issues raised by decree no. 2878 of 23 May 2017 of the President of the Republic of Venezuela on calling elections to a national constituent assembly, [CDL-AD\(2017\)024](#), § 57.

<sup>14</sup> For the quality of parliamentary review of the necessity of a measure, see ECtHR, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013, *Ognevenko v. Russia*, no. 44873/09, § 69, 20 November 2018 and *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 79, 6 October 2005.

<sup>15</sup> The Congress report on "Local and Regional Authorities as Actors and Guarantors of the Rule of Law" [CG\(2024\)46-20](#), paras. 23, 40.

<sup>16</sup> *Mugemangango v. Belgium* [GC], no. 310/15, § 67, 10 July 2020.

<sup>17</sup> A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government at para. 37.

<sup>18</sup> The ECtHR has said that "Democracy thrives on freedom of expression": *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, *Reports* 1998-I.



*of political parties*".<sup>19</sup> In a democracy, the rule of law applies to everyone, including government officials, leaders are held accountable for their actions and can be voted out and minority rights are protected against arbitrary majority rule. At its core, democracy is about freedom, equality and participation. From this perspective, democracy is closely linked to the other structural elements of constitutionalism, namely fundamental rights, the rule of law and the separation of powers. The link between all these elements is so close that there is no democracy without the others. Democracy is also recognized as a mechanism to ensure sustainable development, as highlighted in the UN 2030 Agenda for Sustainable Development.

18. Referring to the hallmarks of a "democratic society", the European Court of Human Rights has attached particular importance to pluralism, tolerance, and broadmindedness. In that context, it has held that, although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved that ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.<sup>20</sup> According to the European Court of Human Rights "it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention".<sup>21</sup> Pluralism and democracy must be based on dialogue and a spirit of compromise.<sup>22</sup>

19. In addition, various forms of non-electoral citizens' participation, manifesting deliberative democracy, have increasingly been employed to strengthen public trust in the political process and to complement representative democracy.<sup>23</sup> Citizen participation beyond elections is now widely regarded as a reliable indicator of a healthy democracy. The 2009 Additional Protocol to the European Charter of Local Self-Government has formalised this as a right "to participate in the affairs of a local authority" which must be guaranteed to all citizens.

20. Democracy can thus be seen both as a value of its own and as a means to secure human rights. Human rights are simultaneously a constitutive element of democracy and an external but closely related factor defining democracy.<sup>24</sup> In addition, democracy presupposes certain human rights, in an immediate way those guaranteeing public participation and in a mediate way those guaranteeing private autonomy and economic, social and cultural rights. Not only do human rights determine the values to be protected by democracy, but they also set limits on the power of a given political majority. Human rights provide indispensable tools and criteria to frame the exercise of both the legislative and executive powers, as well as the basis for judicial adjudication of cases and controversies between private actors and public authorities.

21. Limitations to the rights guaranteed by Articles 21 and 22 of the ICCPR, and to Articles 8-11 of the ECHR must be "necessary in a democratic society": this requirement may be interpreted to imply that democracy is the proper, and even indispensable, political and social environment

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<sup>19</sup> [https://www.coe.int/en/web/venice-commission/-/CDL-AD\(2002\)023rev2-cor-e](https://www.coe.int/en/web/venice-commission/-/CDL-AD(2002)023rev2-cor-e), p. 10. See also, for the freedom of expression of democratically elected representatives, ECtHR, *Bowman v. the United Kingdom*, 19 February 1998, § 42, Reports 1998 I.

<sup>20</sup> See *Chassagnou and Others v. France* [GC], nos. 25088/94 et al., 29 April 1999, para. 112; *S.A.S. v. France* [GC], no. 43835/11, 1 July 2014, para. 128.

<sup>21</sup> *Bayev v. Russia*, nos. 67667/09 and 2 others, 20 June 2017, para. 70. See also *Alekseyev v. Russia*, nos. 4916/07 and 2 others, 21 October 2010.

<sup>22</sup> *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, Reports 1998-I; *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 108, ECHR 2005-XI; and *Tănase v. Moldova* [GC], no. 7/08, § 178, ECHR 2010.

<sup>23</sup> Congress Recommendation 472 (2022) Beyond elections: The use of deliberative methods in European municipalities and regions, available at: <https://rm.coe.int/cg-2022-42-12-en-beyond-elections-the-use-of-deliberative-methods-in-e/1680a5b00d>.

<sup>24</sup> M. Goodhart, Human Rights and Global Democracy, Ethics & International Affairs, Volume: 22, Issue: 4, Carnegie Council on Ethics and International Affairs 2008, p. 395 et seq *ibid.*; Beetham, *ibid.* p. 94.

for realisation of human rights. Article 52(3) CRFEU ensures the same requirement must be met when limiting corresponding rights guaranteed by the Charter.

22. Unlike most human rights, democracy as such cannot be derogated nor restricted. Restricting democracy would be contrary to its substance as a value of its own and as an end, to the fulfilment of which aspire the protection of human rights. Democracy as a form of government cannot be legally derogated. Neither Article 4 of the ICCPR, nor Article 15 of the ECHR, nor Article 27 of the ACHR allow the suspension of democracy in time of war or other public danger.

23. Democracy, human rights and the rule of law are separate but intertwined. It may be argued that they address similar issues but from different angles. As has been emphasised in the introductory part of the Venice Commission Rule of Law Checklist, human rights can only flourish where democracy flourishes. Vice versa: democracy is only possible where human rights, especially those safeguarding public autonomy and electoral participation, are protected. Rule-of-law safeguards are needed as well, for instance to guarantee the fairness of elections.

## **2. Non-democratic political systems and human rights protection**

24. The connection between human rights and democracy becomes even clearer when it is examined for the reverse perspective, by analysing what are the main features of the various types of non-democratic regimes and how their existence depends on the negation, suppression or obstruction of the enjoyment of human rights.

25. According to a well-known classification,<sup>25</sup> non-democratic regimes, also labelled as autocracies, may be divided into two groups: closed autocracies and electoral autocracies.

26. Closed autocracies, while varying significantly, share a fundamental characteristic: they are built on the denial or suppression of essential human rights. Citizens in these regimes are completely deprived of the right to free and fair elections, freedom of expression, and freedom of association. Since state power is of arbitrary nature, human rights such as right to privacy, protection of arbitrary detention, the right to fair trial, and freedom of peaceful assembly remain under constant threat. Even if these rights are formally enshrined in constitutions or laws, their practical application lacks any guarantees. The same applies to the rule of law, which is fundamentally compromised. As free and fair elections do not exist, leaders/rulers de facto or even de jure cannot be held accountable and voted out what means that rule of law cannot be applicable equally for all members of the society. None of democracy's core principles - freedom, equality, and participation - are present in these regimes. On the contrary, closed autocracies actively negate fundamental human rights which are essential elements of democratic societies.

27. Electoral autocracies<sup>26</sup> are hybrid regimes blending authoritarian and democratic elements. They present the following features:

- Elections are held regularly and are generally not outright fraudulent, but the playing field is not level. Opposition parties are not banned and can contest but the ruling party manipulates the rules, controls the media, and if and when necessary, engages in harassment or repression of opponents;
- State resources are regularly abused. Incumbents exploit public institutions and resources for political gain. For example, controlling the judiciary, or using state media for propaganda, or diverting public funds into ruling party campaigns.

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<sup>25</sup> See: Democracy Report 2025, 25 Years of Autocratization - Democracy Trumped?, V-Dem Institute, Gothenburg, Sweden, 2025, p. 6.

<sup>26</sup> Also referred to as "competitive authoritarian regimes": see Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism - Hybrid Regimes After the Cold War*, Cambridge University Press, New York, NY 2010.



- Civil liberties are eroded. Freedom of the press, speech, and association formally exist but are often undermined by legal harassment, censorship, or violence. Opposition politicians, journalists, and civil society groups face regular intimidation or persecution.
- Institutions exist but are subverted. Parliaments, local authorities, courts, and electoral commissions exist, but they are co-opted or controlled by the executive to ensure regime survival.
- The acceptance of multi-party competition is a tool for seeking international and domestic legitimacy. These regimes mimic democratic structures to gain international legitimacy or domestic consent, but the democratic façade masks a deeply authoritarian reality.

28. The democratic *origin* of power – that is, regular, if not free, elections – is therefore not followed by a democratic *exercise* of power.

29. There also exists a “grey zone” of countries, frequently unstable democracies facing periodical sequences or persistent authoritarian challenges, democracies in jeopardy and often in backsliding. Some of them successfully resist and remain democratic, while other succumb to authoritarian rule.

30. Against this background, it is possible to conclude that autocratic systems cannot function nor survive without depriving citizens of essential human rights. Indeed, as underlined by Dahl, “in order to classify a country as democratic we are obliged to make a judgment that certain political rights exist in that country in a realistic (not nominal or formal) sense and at a comparatively high level. If the rights do not exist, or do not exist above a certain threshold, then *by definition* the country is not 'democratic'.”<sup>27</sup>

### 3. Democracy as a human right?

31. None of the international human rights treaties proclaim democracy as a separate human right.<sup>28</sup> The question posed by the Guatemalan government is whether “the repeated references to it on international instruments and the close relationship it has with other human rights make it necessary to determine whether it should be declared as an independent right within the catalogue of human rights”.

32. The Venice Commission recalls in this respect that the ECtHR, as early as in 1978, held that “the Convention is a living instrument which [...] must be interpreted in the light of present-day conditions. In the case now before it, the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member states of the Council of Europe in this field”.<sup>29</sup> A notable example of the living instrument doctrine is the interpretation which was given to Article 3 of Protocol 1: although that article, which provides: “*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*”, does not explicitly proclaim any individual right but just an obligation of member States to hold free elections at reasonable intervals by secret ballots, the ECtHR recognized therein a right to free elections: “[...] having regard to the preparatory work in respect of Article 3 of Protocol No. 1 and the interpretation of the provision in the context of the Convention as a whole, the Court has established that this provision also implies individual rights, comprising the right to vote (the ‘active’ aspect) and to be elected (the ‘passive’ aspect).”<sup>30</sup>

<sup>27</sup> R.A. Dahl, Democracy and Human Rights under different Conditions of Development, in: The Politics of Human Rights, ed. Obrad Savić, The Belgrade Circle, 1999.

<sup>28</sup> The Inter-American Democratic Charter, however, declares that “The peoples of the Americas have the right to democracy”.

<sup>29</sup> ECtHR, *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26, § 31.

<sup>30</sup> ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 48-51, Series A no. 113; *Ždanoka v. Latvia* [GC], no. 58278/00, § 102, ECHR 2006-IV.

33. The same can be said as regards the “right to truth” referred to in Guatemala’s request (§§ 56 ff.), although no such right is provided for by the ACHR. Recognized to victims of oppression by past military regimes, the right to the truth is much more extensive than the right of the same persons to be informed, since it encompasses their right of access to administrative files if not their right to know the fate of their torturers. The same can be said to apply to the “right to defend” (§50 of the request), which appears to be similar to the “right to resist” explicitly recognized as a human right by a vast number of Constitutions and Charters throughout the world, including the African Charter on Human and Peoples’ Rights.

34. The Venice Commission recalls that, as a rule, the remedies offered by international human rights treaties are of a legal character, and the same goes for the proceedings before monitoring bodies. In the Commission’s view, therefore, to have added value, a new, specific – collective or individual –<sup>31</sup> “right to democracy” would need to be “justiciable”, which entails that its content be sufficiently clear and defined, including in a way that one may discern it from other proclaimed rights.

35. As concerns the content of the notion of “democracy” at the level of the United Nations, the Venice Commission observes that the Commission on Human Rights in its landmark 2009 resolution “Further measures to promote and consolidate democracy”<sup>32</sup> declared that the essential elements of democracy included respect for human rights and fundamental freedoms, freedom of association, freedom of expression and opinion, access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and organizations, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and a free, independent and pluralistic media.

36. Article 21 of the Universal Declaration of Human Rights provides for everyone’s “right to take part in the government of his country, directly or through freely chosen representatives (para. 1), and consolidates the principle that “the will of the people shall be the basis of the authority of government” by providing the requirement of “periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures” (para. 3). The Declaration recognises the freedoms of opinion and expression (Art. 19), peaceful assembly and association (Art. 20). In the preamble of the Declaration it is emphasised that “human rights should be protected by the rule of law”, in order not to compel the people to recourse “as a last resort to rebellion against tyranny and oppression”.

37. The International Covenant on Civil and Political Rights (Article 25) protects the right and opportunity of every citizen “without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors [...]” It further protects the freedom of expression and of the media (Article 19), the freedom of peaceful assembly (Article 21), the freedom of association

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<sup>31</sup> The question of democracy as a human right can be posed in terms of both individual and group rights. The Inter-American Democratic Charter proclaims that “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it”. The ECHR only includes individual rights, so that under the ECHR, even a right to democracy could only be an individual right. The same analysis is valid for the Charter of Fundamental Rights of the European Union (CFREU). In difference from the ECHR, the CFREU includes Member-State obligations to promote certain policies, such as environment and consumer protections, but these obligations have not been formulated as corresponding group rights.

<sup>32</sup> <https://www.ohchr.org/en/press-releases/2009/10/commission-human-rights-adopts-measures-civil-and-political-rights-economic#:~:text=In%20a%20resolution%20on%20further%20measures%20to%20promote,administration,%20and%20a%20free,%20independent%20and%20pluralistic%20media.>

(Article 22); non-discrimination and equal protection of the law (Article 26); the right to access to an independent and impartial tribunal (Article 14).

38. The Inter-American Democratic Charter states (Article 3) that “Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, 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 pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.”<sup>33</sup>

39. The American Convention on Human Rights recognises the right to participate in public affairs, vote and be elected in genuine periodic elections (Article 23). Article 29 prohibits the interpretation of the Convention in a way that restricts the enjoyment of rights, and Article 1 obliges States to respect and ensure rights without discrimination. The ACHR guarantees freedom of thought and expression (Article 13), freedom of assembly (Article 15) and freedom of association (Article 16). Moreover, the ACHR guarantees equality (Article 24) and the right to a fair trial (Article 8) and judicial protection (Article 25).

40. In Europe, there is no single recognised definition of “democracy”, while several features – such as government by the people, free and fair elections, local self-government, participatory and inclusive procedures, respect for human rights and in particular the freedoms of speech, assembly and association, the rule of law, separation of powers - have been consistently recognised as its constitutive elements (see above).

41. At their 4th Summit which took place in Reykjavík, on 16 and 17 May 2023, the Heads of State and Government of the Council of Europe adopted the “Reykjavík Principles for Democracy”, whereby they committed, *inter alia*: to actively enable and encourage the right to democratic participation at national, regional and local levels through free and fair elections; to hold elections and referenda in accordance with international standards grounded in the respect for the freedoms of expression, assembly and association; to maintain and protect independent and effective parliaments and other democratic institutions which determine their own rules and procedures and in which representatives from across the political spectrum can participate; to uphold the separation of powers with appropriate checks and balances between different State institutions, at all levels, to prevent any excessive concentration of power; to ensure independent, impartial and effective judiciaries; to ensure the right to freedom of expression, to hold opinions and to receive and impart information and ideas, both online and offline, and to full protection of free, independent, plural and diverse media.<sup>34</sup>

42. As stated above, the ECHR recognises first of all, the active and passive electoral rights (Article 3 of Protocol 1, which however is only applicable with regard to the legislature), and also other rights that ensure that candidates and voters can freely form their opinion and express their will, such as the freedom of expression and of the press (Article 10) and the freedom of assembly and association for political purposes, including the creation of political parties (Article 11). The ECHR also proclaims the prohibition of discrimination (Article 14, and Protocol 6), which is a prerequisite for a fair balance between candidates, and the right to a fair trial by an independent and impartial tribunal (Article 6) and the right to a remedy (Article 13), which ensure that these rights are protected and that the results of the elections are fair.

43. The Venice Commission is therefore of the view that, *de lege lata*, most, if not all, the “justiciable” aspects of democracy are already protected under specific individual rights, regard being had to the living instrument doctrine.

<sup>33</sup> <https://www.oas.org/en/democratic-charter/>.

<sup>34</sup> <https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1>.

44. Rather than elevating democracy to an individual or a collective human right, it would be preferable to keep democracy and human rights separate but intertwined: democracy can be protected through the judicial protection of the many recognised individual rights which are its constitutive elements. While courts may not entertain claims of direct interference with 'democracy' as a general principle, claims under a variety of other provisions of human rights law, those identified in this *Amicus* brief, often do constitute claims about the individual right to enjoy all the elements of a democratic society.

45. In conclusion, in response to the first question, the Venice Commission is of the view that States are under an obligation to guarantee and promote democracy as a means for the effective exercise of human rights, as well as through the effective protection of those aspects of democracy that are specifically guaranteed as individual rights.

## B. Question 2

**In the light of the American Convention on Human Rights, is the defence 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?**

46. In the Venice Commission's view, irrespective of the existence of a specific, individual "right to democracy", States are under an obligation to guarantee and promote democracy as a means for the effective exercise of human rights, as well as through the effective protection of those aspects of democracy that are specifically guaranteed as individual rights.

47. Article 1 of the Inter-American Democratic Charter states that governments have the duty to promote and defend democracy. This obligation derives from the fact that democracy is the only possible source of rational legitimacy of power. The Charter is not a binding treaty, but it reinforces the normative status of democracy within the Inter-American system.

48. The defence of democracy can compel states and governments to take affirmative action for eliminating discrimination on the basis of sex, race, creed, colour or national origin. This duty is imposed by Art 12 of the Inter-American Democratic Charter, which declares that "the OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty".

49. As the Venice Commission has stated on several occasions, the prohibition of discrimination is one of the most fundamental principles of current international human rights law.<sup>35</sup> International standards are also clear about the necessity of guaranteeing equality between women and men. This principle is well established in the Americas since 1948, when the Inter-American Convention on the Granting of Political Rights to Women was adopted. Moreover, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women requires States to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure the right of women to participate in the formulation and implementation of government policies and to hold public office and exercise all public functions. In this line, the Code of Good Practice in Electoral Matters provides that "[l]egal rules

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<sup>35</sup> For example, *Amicus curiae* brief on the compatibility with the non-discrimination principle of the selection of the Republic day of the Republika Srpska, [CDL-AD\(2013\)027](#), para 7.

requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.”<sup>36</sup>

50. In Europe, there is a broad agreement that women's representation should be increased in democratic institutions, including in Parliament<sup>37</sup> and in local and regional councils,<sup>38</sup> and the Venice Commission has stated on several occasions that the small number of women in politics remains a critical issue which undermines the full functioning of the democratic process.<sup>39</sup> The Council of Europe Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making<sup>40</sup> recommends that member States use the necessary mechanisms for equal access to political, economic, social and cultural resources between women and men to eliminate gender inequality that still exists in member States. For the purpose of the Recommendation, balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

51. The Venice Commission has recognized that States can achieve this goal through a variety of measures. Some of them are related to internal party regulations,<sup>41</sup> whilst others may be contained in legislation. For example, *“Gender equality may be promoted through the creation of a “women’s section” or “gender division” within political parties; by introducing electoral gender quotas that could increase women’s parliamentary representation, by providing training and capacity-building programmes developed for female members and potential candidates prior to their selection, by adopting, implementing or evaluating gender-equality strategies, plans and programmes at different levels, including specific action plans to achieve balanced participation and representation of women and men in internal political party offices, or by recognizing and considering the family responsibilities of party members.”*<sup>42</sup>

52. The Venice Commission's reports recommend that States take or improve measures to increase the presence of women in representative institutions or the governing bodies of political parties.<sup>43</sup> Electoral quotas are regarded as an appropriate and legitimate measure to increase women's parliamentary representation but is for each country to decide how to improve gender equality.<sup>44</sup>

53. International standards fully support the idea of compulsory education on human rights at all levels of education.

54. The preamble of the Universal Declaration of Human Rights recommends that States and nations promote the enshrined rights through education and teaching. In order to fulfil this

<sup>36</sup> Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023](#) rev2-cor, Guideline I.2.5.

<sup>37</sup> See already Venice Commission, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues, [CDL-AD\(2006\)018](#), para. 179.

<sup>38</sup> Congress Recommendation 375 (2015) Criteria for standing in local and regional elections and Congress Recommendation 390 (2013) Women's political participation and representation at local and regional levels

<sup>39</sup> Venice Commission and ODIHR, Armenia - Joint Opinion on the draft electoral code as of 18 April 2016, [CDL-AD\(2016\)019](#), para. 121; see already Venice Commission and ODIHR, Guidelines on Political Parties Regulation, [CDL-AD\(2010\)024](#), para. 99.

<sup>40</sup> Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e0848](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848).

<sup>41</sup> Parliamentary Assembly of the Council of Europe, [Resolution 1898 \(2012\) on “Political parties and women's political representation”](#); Assembly [Resolution 1489 \(2006\) on Mechanisms to ensure women's participation in decision-making](#).

<sup>42</sup> Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, [CDL-AD\(2014\)035](#), para. 60.

<sup>43</sup> For example, *Joint opinion on the Draft electoral code of Armenia as of 18 April 2016*, [CDL-AD\(2016\)019](#), para. 122; *Joint opinion on the draft election code of Georgia*, [CDL-AD\(2011\)043](#), paras. 33-35

<sup>44</sup> *Report on the method of nomination of candidates within political parties*, [CDL-AD\(2015\)020](#), para. 83; Opinion on the amendments to the Election Code which abolish gender quotas in Georgia, [CDL-AD\(2024\)023](#), para. 41.



mandate, the Council of Europe adopted the Charter on Education for Democratic Citizenship and Human Rights Education within the framework of Recommendation CM/Rec (2010)7. Art 6 of the Charter urges member states to incorporate education for democratic citizenship and human rights education into the curricula for formal education at pre-primary, primary and secondary school level, as well as vocational education and training programmes. Art 7 of the same text recommends, with due respect for the principle of academic freedom, the inclusion of education for democratic citizenship and human rights education in higher education institutions, in particular for future education professionals.<sup>45</sup>

55. In the Americas, Article 13.2 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) sets out the values that education should promote. One of these values is respect for human rights.

56. In any case, human rights education must be compatible with political pluralism and be respectful of the other rights enshrined in the American Convention on Human Rights, including freedom of conscience, religion, thought, and expression. This means that human rights education cannot be used by public authorities for indoctrination purposes. As the Venice Commission has stated, “Pluralism in education as required in a democracy has been interpreted as a prohibition against indoctrination which would not respect the religious and philosophical convictions of parents. Therefore, information or knowledge included in the curriculum must be conveyed in an “objective, critical and pluralistic manner.”<sup>46</sup>

### C. Question 3

**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 defence 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?**

57. The independence of electoral bodies is a well-established principle in international standards.

58. In the case of electoral tribunals, it is a requirement of fundamental rights, such as the right to a fair trial. For instance, Article 14.1 of the *International Covenant on Civil and Political Rights* states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. Similarly, Article 8.1 of the American Convention on Human Rights requires independent, competent and impartial tribunals to guarantee the right to a fair trial. The European Court of Human Rights and the Court of Justice of the European Union have defined the requirements of independence through consistent case law.<sup>47</sup> According to these decisions, independence requires firstly autonomy, meaning that judges must be free to exercise their functions without being subject to any hierarchical constraints, subordination to any other body or taking orders or instructions from any source. Secondly, independence requires impartiality: judges must set aside their own convictions and any other interests to consider exclusively what the law provides for the resolution of the specific case.

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<sup>45</sup> Parliamentary Assembly of the Council of Europe, [Resolution 2552 \(2024\) on “Strengthening democracy through participatory and deliberative processes”](#).

<sup>46</sup> *Amicus curiae brief on the compatibility with human rights standards of certain articles of the Law on primary education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina*, [CDL-AD\(2012\)013](#), para. 26.

<sup>47</sup> For examples, in the case of the CJEU, C-585/18 *AK and others*, para. 121, C-8/19, *Associata Forumul*, para. 196. In case of the ECHR, *Grzęda v. Poland* [GC], no. 43572/18, § 308, 15 March 2022; *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 234, 1 December 2020.

59. The independence of electoral tribunals guarantees not only fundamental rights, but also democracy. It ensures equality between candidates and the fairness of elections. Political parties running in elections will only accept the legitimacy of judges' decisions on electoral matters if the judges are independent. Independence of electoral tribunals is not only a guarantee of fundamental rights, but also of democracy. Indeed, it ensures the equality between candidates and the fairness of the elections. Only if judges are independent and impartial will their decisions on electoral matters be accepted as legitimate by political parties running in elections.

60. The Venice Commission has stressed that both the central electoral commission and the electoral tribunal should be duly shielded from political pressure. Mechanisms of criminal and disciplinary accountability of electoral commissions and tribunals should be established and should be effective, but they should not expose their members to political pressure. It should be underlined that neither members of the EMBs nor electoral judges need political trust; they have to act in accordance with the law, and this is the basis for public trust in them and in the electoral bodies.<sup>48</sup>

61. The Venice Commission has expressed the view that judges, including electoral judges, should not be subject to political impeachment, because it exposes them to undue interference by parliament and therefore represents a potential, if not an actual threat to their independence.<sup>49</sup> Electoral judges do not need to maintain political trust through direct accountability; they have to act in accordance with the law, and this is the basis for public trust in them.<sup>50</sup>

62. Fairness in the elections also requires the independency of administrative electoral bodies. This is also a well-established principle in international standards. For example, the Interparliamentary Union's 1998 *Code of Conduct for Elections* stated that "the importance and practical usefulness of an independent and impartial authority responsible for all aspects of the electoral process is increasingly evident".<sup>51</sup> Furthermore, the OSCE/ODIHR's *International Standards and Commitments on the Right to Democratic Elections*<sup>52</sup> proclaim that "The administration of democratic elections requires that election commissions/bodies are independent and impartial. This is a critical area as the election administration machinery makes and implements important decisions that can influence the outcome of the elections".

63. However, the Venice Commission's *Code of Good Practice in Electoral Matters* is the most comprehensive text covering the requirements that independence imposes on electoral administrative bodies. The Code begins with a general remark: "Only transparency, impartiality and independence from politically motivated manipulation will ensure the proper administration of the election process, from the pre-election period to the end of the processing of the results".<sup>53</sup> For this reason, the Code recommends establishing "independent and impartial electoral commissions" at every level of the elections.<sup>54</sup>

64. The Code of Good Practice sets out principles regarding the composition of electoral commissions. It follows from the Code that pluralism is the main guarantee of impartiality and independence. Accordingly, the Code generally states that commissions should primarily comprise representatives of political parties that are already in parliament or that have won a certain percentage of the vote. However, more recent documents from the Venice Commission

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<sup>48</sup> Venice Commission, Opinion on the draft Amendment of Article 99 of the Constitution of Peru concerning the impeachment of members of Election Management Bodies, [CDL-AD\(2025\)007](#), § 85.

<sup>49</sup> Venice Commission, Opinion on the draft Amendment of Article 99 of the Constitution of Peru concerning the impeachment of members of Election Management Bodies, [CDL-AD\(2025\)007](#), § 91.

<sup>50</sup> Venice Commission, Opinion on the draft Amendment of Article 99 of the Constitution of Peru concerning the impeachment of members of Election Management Bodies, [CDL-AD\(2025\)007](#), § 114.

<sup>51</sup> <https://www.ipu.org/resources/publications/reference/2016-07/codes-conduct-elections>, para. 2.5.1.

<sup>52</sup> <https://www.osce.org/files/f/documents/9/3/16859.pdf>, p. 21.

<sup>53</sup> *Code of Good Practice in Electoral Matters*, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev2-cor-e), part II, 3.1.

<sup>54</sup> *Code*, part. II, 3.1.



advise against over-politicisation of the commission's work. In such cases, commission members act in the interest of their parties rather than the electorate. For this reason, integrating non-partisan members may help to de-politicise the commission and encourage more professional working practices.<sup>55</sup>

65. Furthermore, the status granted to members of electoral commissions, and the manner in which these institutions operate, also contribute to independence and impartiality. The Code states that bodies that appoint members to electoral commissions should not be able to recall them, as this would cast doubt on their independence. Discretionary recall is unacceptable. The Commission has found that members of electoral commissions should not be subject to political impeachment, because the duty of these bodies is to apply the law and to act in accordance with the law, and this is the basis for public trust in them; they do not need to be held directly accountable to political institutions.<sup>56</sup>

66. The Code also states that the central electoral commission must be a permanent administrative institution responsible for liaising with local authorities and other lower-level commissions. It also stipulates that members of electoral commissions must be qualified in electoral matters. The Code establishes several principles for the decision-making process, such as clear rules of procedure, qualified majorities, and especially transparency. According to the Code, meetings of the central electoral commission should be open to the public and the media.<sup>57</sup>

67. Given the crucial role of election administration in ensuring the fairness of elections and the right to vote and stand for election, States must protect electoral bodies and their members. Art 1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights requires states to take the necessary steps to ensure full compliance with the rights recognised in the Protocol.

68. In some cases, protecting democracy may require limitations on certain fundamental rights, such as freedom of expression. In certain circumstances, such restrictions may be necessary to prevent the dissemination of false information that could affect the legitimacy of the decisions made by these bodies.<sup>58</sup> However, these limitations are also subject to limits, such as necessity, proportionality and legality, as well as "necessity in a democratic society". Art. 30 of the above-quoted Protocol states that the restrictions to fundamental rights must be applied in accordance with laws and with the purpose for which such restrictions have been established.

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<sup>55</sup> *Compilation of Venice Commission Opinions and Reports concerning Central Electoral Management Bodies*, CDL-PI(2024)005, [https://venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)005-e](https://venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)005-e), p. 30.

<sup>56</sup> Venice Commission, Opinion on the draft Amendment of Article 99 of the Constitution of Peru concerning the impeachment of members of Election Management Bodies, [CDL-AD\(2025\)007](#), § 110.

<sup>57</sup> Code, part. II, 3.1.

<sup>58</sup> Parliamentary Assembly of the Council of Europe, Assembly Resolution 2593 (2025) on [Foreign interference: a threat to democratic security in Europe](#); Congress Recommendation 525 (2025) Foreign interference in electoral processes at local and regional levels.

#### D. Question 4

**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?**

69. The Venice Commission cannot, in the limited space of this brief, answer this question in an exhaustive manner, and will therefore only provide some elements of reply.

70. The abuse of rights has been a risk during electoral periods since the beginning of representative democracy. However, these dangers have increased alongside the widespread adoption of digital technologies. A wide range of phenomena are now possible, including, for example, the spread of illegal hate speech, fake news, and foreign interference and manipulation.

71. The Venice Commission's *Interpretative Declaration on the Code of Good Practices in Electoral Matters as concerns Digital technologies and Artificial Intelligence*<sup>59</sup> recognises that these issues can jeopardise voters' freedom to form an opinion and the equal opportunities required by equal suffrage. However, the risks go beyond this. Indeed, the European Commission has pointed out that these events not only endanger voters' rights, but also affect candidates and election workers.<sup>60</sup>

72. Such actions may also threaten the independence of members of electoral bodies. As stated above, independence encompasses both external autonomy and internal impartiality. Certain behaviours, such as disseminating images of members of these bodies, disclosing their personal data or threatening or insulting them, may generate fear when making certain decisions. This fear of reprisals can affect neutrality.

73. States must protect the independency of electoral bodies and their members, not only because these bodies are public institutions, but also because their existence and functions are vital for democracy.

74. The Venice Commission has confirmed that states have an obligation to take effective steps to ensure a supportive environment for robust public debate. According to the Interpretative Declaration quoted above, "The fight against information disorders, including disinformation explicitly aimed at questioning or misleading about the basic aspects of electoral procedures, calls for regulation by the state and an independent body with adequate resources and powers to enforce such regulation".<sup>61</sup>

75. The European Commission of the European Union has also listed a number of instruments and best practices that states can implement to mitigate systemic risk to electoral processes.<sup>62</sup>

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<sup>59</sup> CDL-AD(2024)044, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)044-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)044-e), p. 3.

<sup>60</sup> DSA Elections Toolkit for Digital Services Coordinators. Instruments, Best Practices and Lessons Learnt, <https://digital-strategy.ec.europa.eu/en/library/dsa-elections-toolkit-digital-services-coordinators>, p. 12.

<sup>61</sup> *Interpretative Declaration*, part. II, para. 48.

<sup>62</sup> DSA Elections Toolkit for Digital Services Coordinators, p. 9.

76. However, some of these measures may restrict fundamental rights, including freedom of expression and media freedom. For this reason, any restrictions on these rights must be based in law, and be necessary in a democratic society in the public interest, and proportionate.<sup>63</sup>

### E. Question 5

**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?**

77. Political parties are the primary manifestation of political pluralism, providing citizens with a means of participating in political life and, especially, in representative institutions. Their role is so fundamental that modern democracy is often referred to as 'party democracy'. This importance has led to them being recognised in some contemporary constitutions as a special form of association.

78. Many of the questions asked in this section are answered in the second edition of the Venice Commission and OSCE/ODIHR's *Guidelines on Political Party regulation*.<sup>64</sup> For this reason, what follows is a brief summary of the statements made by that body in the text just cited.

79. Political parties are a form of association. In any democratic system, states must respect the freedom of parties to form and operate, both internally and externally. The Venice Commission and OSCE/ODIHR have pointed out that "the states shall not only (passively) respect freedom of association, but also actively protect and facilitate this exercise. The state shall protect political parties and individuals in their freedom of association from interference by non-state actors, by legislative means".<sup>65</sup> The Commission has expressed the opinion that any legal requirement imposed on political parties for selecting candidates should be effectively supervised by independent bodies, such as tribunals or electoral commissions, ensuring the existence of effective remedies available to protect the freedom of association of political parties and political rights of individuals.<sup>66</sup> Additionally, states must respect and ensure respect for other fundamental rights belonging to political parties and their members, including freedom of expression and opinion, and the right to assemble and demonstrate. Some systems also recognise political parties as having public relevance. In such cases, States typically provide parties with public resources, such as funding to cover their day-to-day running costs or election expenses.

80. Some countries require the registration of political parties for certain purposes, such as to acquire legal personality, to allow parties to participate in elections, and to receive certain forms of state funding. This requirement does not represent a violation of the right to free association. According to the Venice Commission and OSCE/ODIHR, deadlines for deciding registration applications should be reasonably short, to ensure the effective realisation of the right of individuals to associate. Decisions on registration should be taken in a politically neutral way; at

<sup>63</sup> *Interpretative Declaration*, part. 1, para.21.

<sup>64</sup> *Guidelines on Political Party regulation. Second Edition*, CDL-AD(2020)032, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e).

<sup>65</sup> *Guidelines*, para. 40.

<sup>66</sup> Venice Commission, Opinion On the draft constitutional amendments concerning the electoral system of Mexico, [CDL-AD\(2022\)031](#), § 50.

the very least, political parties should have the right to appeal adverse decisions before a judicial body. In case of denying party registration, grounds must be clearly stated in law and based on objective criteria.<sup>67</sup>

81. Prohibition or dissolution of a political party is a serious interference and should be regarded as exceptional measures to be applied in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country.<sup>68</sup> Thus, the competence of state authorities to dissolve a political party or prohibit one from being formed should concern exceptional circumstances, must be narrowly tailored and should be applied only in extreme cases.<sup>69</sup> Legislation should specify narrowly formulated criteria, describing the extreme cases in which prohibition and dissolution of political parties is allowed. Even where such reasons for prohibition or dissolution are listed in legislation, it is important to note that prohibition is only justified if it meets the strict standards for legality, subsidiarity and proportionality.<sup>70</sup>

82. The Preamble to the American Convention on Human Rights reaffirms the intention to establish a system of personal freedom and social justice. Furthermore, it also clarifies that these objectives must be achieved “within the framework of democratic institutions”. This statement makes it clear that fundamental rights can only be guaranteed in a democratic political system, and there is no democracy without political pluralism. Art. 16 of the American Convention recognises the fundamental right to freedom of association, including the right to form political parties, as they are a specific form of association. Therefore, a political system without parties, or with only one party, would violate the spirit and letter of the Convention.

#### IV. Conclusions

83. By letter of 27 March 2025, the President of the Inter-American Court of Human Rights invited the Venice Commission of the Council of Europe to submit written observations in relation to the request of the Republic of Guatemala for an advisory opinion of that Court on democracy and its protection before the Inter-American Human Rights System. The Venice Commission highly values the interest of the Inter-American Court of Human Rights in its work and considers that it is very important to maintain and develop these synergies.

84. In this *Amicus curiae* brief, the Venice Commission has held that rather than elevating democracy to an individual or a collective human right, it would be preferable to keep democracy and human rights separate, yet closely intertwined: democracy can be protected through the judicial protection of the many recognised individual rights which are its constitutive elements. That is the Commission’s response to the first question put by the Republic of Guatemala. In the Commission’s view, States are under an obligation to guarantee and promote democracy at the same time as a means for the effective exercise of human rights, and through the effective protection of those aspects of democracy that are specifically guaranteed as individual rights.

85. In answering the first and the remaining four questions, the Venice Commission has referred primarily to European standards, mainly the Statute of the Council of Europe, the European Convention on Human Rights and the case-law of the European Court of Human Rights, and the Charter of Fundamental Rights of the European Union, as well as the texts adopted by the Council of Europe’s statutory bodies and the general documents adopted by the Venice Commission, such as the Code of Good Practice on Electoral Matters and the Rule of Law Checklist, and its country-specific opinions. The Commission hopes that the responses it provided will be useful in the considerations of the Inter-American Court of Human Rights; it remains at its disposal for any further input.

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<sup>67</sup> *Guidelines*, paras 87-88.

<sup>68</sup> Venice Commission, Guidelines on prohibition and dissolution of political parties and analogous measures, [CDL-INF\(2000\)001](#).

<sup>69</sup> *Guidelines*, para. 106.

<sup>70</sup> *Guidelines*, para. 109.