
**REQUEST TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
FOR AN ADVISORY OPINION**

DEMOCRACY AND HUMAN RIGHTS IN THE CONTEXT OF IMPEACHMENTS

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) submits to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court,” or “the Court”) this request for an advisory opinion, in keeping with Article 64(1) of the American Convention on Human Rights (hereinafter “the Convention,” or “the American Convention”) and Article 70 of the Court’s Rules of Procedure.

2. The aim of this request for an advisory opinion is to allow the Honorable Inter-American Court to delve into the inextricable relationship between democracy and human rights, specifically in cases in which there is a change in a nation’s president under circumstances that call into question the legitimacy of such change or the principle of separation of powers, including the impeachment of a democratically elected president in conditions that raise considerable doubts about the safeguards of due process.

3. A process of States’ democratization has been consolidated on the American continent, which has, as a result, strengthened institutions and mechanisms for protecting individuals’ human rights under the rule of law and democracies with greater guarantees of stability. This has allowed a tradition of military coup d’états and takeovers by force that took place decades ago to be overcome.

4. However, in recent years, situations like the ones referred to in the previous paragraph have arisen on the continent, which the Commission has monitored closely through its multiple mechanisms. In said context, the Commission has sounded the alarm and expressed its concerns about the danger that such situations may entail for the full exercise of human rights in a democratic State, both collectively with respect to society as a whole, as well as individually to the detriment of specific persons.

5. Thus, for example, the Commission initially spoke out on the coup d’état that took place in Honduras in 2009 in a press release and, subsequently, in a country report published that same year.¹ On June 28, 2009, the IACHR vigorously condemned “the interruption of constitutional order in Honduras” and made an urgent call to “to restore the democratic order in Honduras and to respect human rights, the rule of law and the Inter-American Democratic Charter.”²

¹ IACHR. Honduras: Human Rights and the Coup d’État. OEA/Ser.L/V/II. Doc.55, December 30, 2009.

² IACHR. Press release No. 42/09: IACHR strongly condemns coup d’état in Honduras, June 28, 2009. Available at: <http://www.IACHR.org/Comunicados/English/2009/42-09eng.htm>.

6. In that context, the Commission requested a visit to Honduras and at the same time granted numerous precautionary measures; it sought information on the danger faced by specific individuals as a result of the coup d'état; it requested information in keeping with the powers provided for under Article 41 of the American Convention; and it activated requests for information under Article XIV of the Inter-American Convention on the Forced Disappearance of Persons.³

7. The case of López Lone et al. v. Honduras was one example of human rights violations related to retaliatory actions taken for condemning the coup d'état. The case, which regarded the dismissal of a group of judges, was addressed through the petitions and case system, first by the Commission and subsequently by the Inter-American Court. At a later point, the Commission will address some relevant points from the Honorable Court's decision in that case.

8. In 2012 the Commission also monitored the *impeachment proceedings by which the legislature removed former President Fernando Lugo from office in Paraguay*. The Commission issued a press release about this event in which it expressed its deep concern for the circumstances in which these impeachment proceedings took place. Based on the information gathered at that time, the IACHR considered "unacceptable the speed with which the impeachment of the constitutional and democratically elected President was conducted" and affirmed that the rule of law in Paraguay had been affected.⁴

9. More recently, in 2016, the IACHR also issued a press release regarding the *impeachment proceedings by which the legislature ousted the former President Dilma Rousseff in Brazil*, expressing concern for the constitutional and democratically elected President's removal from office. Specifically, the Commission stated that given "the accusations about irregularities, arbitrariness and lack of due process guarantees during the stages of the procedure" "the monitoring and supervision functions that the competent authorities of the Judiciary in Brazil implement on [sic] this case"⁵ were especially important. Along these lines, the Commission made an appeal to international monitoring organizations to closely follow the case as well as "the potential repercussions that the destitution [sic] process has on the rights of President Rousseff and Brazilian society."⁶

³ IACHR. Honduras: Human Rights and the Coup d'État. OEA/Ser.L/V/II. Doc.55, December 30, 2009, para. 3. See also: IACHR. Press release No. 47/09: IACHR Expresses Concern over the Suspension of Guarantees in Honduras and Amplifies Precautionary Measures, July 3, 2009. Available at: <https://www.cidh.oas.org/Comunicados/English/2009/47-09eng.htm>; IACHR. Press release No. 60/09: IACHR Presents Preliminary Observations on Its Visit to Honduras, August 21, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/60-09eng.htm>; IACHR. Press Release No. 64/09: IACHR Urges Honduras' De Facto Government to Respect Protests, September 22 2009. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/64-09eng.htm>; IACHR. Press Release No. 65/09: IACHR Condemns Excessive Use of Force in Repression of Protests in Honduras, September 22, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/65-09eng.htm>; IACHR. Press release No. 68/09: IACHR Urges Honduras to Respect the Rights of the Persons inside the Embassy of Brazil, September 25, 2009. Available at: http://www.oas.org/en/media_center/press_release.asp?sCodigo=IACHR68/09; and IACHR. Press release No. 69/09: IACHR Condemns Suspension of Guarantees in Honduras, September 29, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/69-09eng.htm>.

⁴ IACHR. Press release No. 72/12: IACHR Expresses Concern over the Ousting of the Paraguayan President, June 23, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/072.asp

⁵ IACHR. Press release No. 126/16: IACHR Expresses Concern over Impeachment of President of Brazil, September 2, 2016. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2016/126.asp.

⁶ IACHR. Press release No. 126/16 IACHR Expresses Concern over Impeachment of President of Brazil, September 2, 2016. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2016/126.asp.

10. The Commission considers that these situations sound the alarm about potential situations of a perversion of impeachment proceedings and the subsequent risk that such proceedings can be used arbitrarily in order to conceal a parliamentary coup. These risks underscore the importance of the Honorable Court issuing a general ruling, unrelated to specific cases, about the concrete implications, both from a collective and individual perspective, that impeachments of a democratically elected president may have under conditions that give rise to considerable doubts about the guarantees of due process, in light of the American Convention on Human Rights and other applicable inter-American instruments.

11. A ruling by the Honorable Court in this regard is essential to protect democratic institutions and human rights, regardless of the system that States in the region may have, be they presidential, parliamentary, or a mixed system that is presidential or parliamentary leaning.

12. The principle of separation of powers—common to different systems of political organization—under scenarios such as those submitted to the Inter-American Court for its interpretation, may be affected by the legislative branch’s potentially arbitrary use of impeachment against the executive branch through improper judicialization of essentially political matters. At the same time, this principle may be affected by a potentially arbitrary use of judicial oversight of these proceedings when there is a politicization of the judicial branch. Potential corruption in any of the branches of government makes these situations even more complex. In both scenarios, democratic institutions are jeopardized and the full respect for human rights faces significant risk.

13. For this reason, one of the main purposes of this request for an advisory opinion is to obtain an interpretation by the Honorable Court that elucidates the manner in which the American Convention on Human Rights and the set of rights that it protects, as well as the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, and the IACHR Statutes, read together with the Inter-American Democratic Charter, offer the necessary balance between the principle of separation of powers and the full exercise of rights that protect both persons subject to impeachment proceedings, as well as society in general.

14. Below, the Commission substantiates its request for an advisory opinion, referring, firstly, to a general and preliminary conceptualization of the construct of impeachment proceedings against a democratically elected president. Secondly, the IACHR refers to existing developments in the Honorable Court’s jurisprudence regarding the issues at hand in order to show the importance of developing and deepening standards in this respect and how the issues raised in this request are novel and different with respect to said jurisprudence. Thirdly, the Commission shares with the Court some petitions currently under its consideration in order to demonstrate that this request transcends these petitions and seeks a ruling of a general scope with an impact on the States of the region. Fourthly, and lastly, the Commission poses specific questions to the Honorable Court.

15. The Commission reserves the option of formulating its own considerations on the questions submitted once the Inter-American court approves processing of this request for an advisory opinion, by the deadline stipulated for receiving contributions from organs of the OAS, member State, civil society, academia, and other participants.

16. The Commission has designated the President of the IACHR, Francisco Eguiguren Praeli, and its Executive Secretary, Paulo Abrão, as Delegates. Additionally, Elizabeth Abi-Mershed, Assistant

Executive Secretary, as well as Silvia Serrano Guzmán and Christian González Chacón, attorneys for the Executive Secretariat, will act as Legal Advisors.

II. GENERAL AND PRELIMINARY CONCEPTUALIZATION OF THE CONSTRUCT OF IMPEACHMENT PROCEEDINGS AGAINST DEMOCRATICALLY ELECTED PRESIDENTS

17. The *“juicio político”* as it is known in Spanish (literally *“political trial”*) is inspired in impeachment—a construct of British origin, which was then emulated in the United States of America. For this reason it is also provided for under the different political systems of the Americas, both in the parliamentary systems (of British origin, such as in the Caribbean States and Canada, as well as the presidential systems (inspired in the U.S. model) and even in “rationalized” or “parliamentarized” presidential regimes that exist in some Latin American states, which have added some institutions characteristic of parliamentary regimes to the presidential system, such as political responsibility of ministers, vote of no confidence, etc.

18. Impeachment or *“juicio político”* is a special proceeding applied to the president of the republic and/or specific high-level government authorities, which consists of levelling charges against the president or these authorities for the commission of crimes in the exercise of their office, serious violations of the constitution, or even common crimes. Their responsibility and eventual punishment (removal from office and disqualification from holding public office) is at the hands of the Congress, Parliament, or Assembly. Thus, the term *“political trial”* in Spanish, as the body that conducts these proceedings is eminently political.

19. We must differentiate the nature and scope of impeachment as compared to a vote of no confidence, which may be adopted under several normative frameworks on the continent by the parliament itself against high-ranking officials in a parliamentary system or a “parliamentarized” presidential system. Although both impeachment and a vote of no confidence are adopted by the parliament by a qualified majority vote (which generally is two-thirds or half plus 1) and both lead to removal of a high-ranking official from office when approved, a vote of no confidence is the expression of disapproval or lack of confidence in the political management or performance of high-ranking officials; thus, it refers to political responsibility. Impeachment, in contrast, would be appropriate where charges of committing crimes or serious offenses are leveled against the president or high-level officials in the exercise of their office or during their term in office, hence its quasi-criminal nature. It is noteworthy that in some countries, like Mexico, the President of the Republic is not subject to impeachment; in the case of high-level government officials (including some who are popularly elected, such as federal legislators or governors of federal states) grounds for impeachment are legally regulated, in the understanding that they are not crimes strictly speaking, inasmuch as a finding of criminal responsibility lies with the criminal courts, subject to the lower house of congress stripping an official of his or her immunity.

20. Going beyond this description, the Commission considers it is important to consult with the Honorable Court about whether impeachment proceedings brought by Congress would be restricted to the grounds that are expressly provided for, and, in principle, in the constitution, which entail charges of crimes or serious constitutional violations; in other words, responsibility of a criminal kind, not of a political kind that stems from accountability regarding performance, which can give rise to a different parliamentary proceeding like a vote of no confidence in constitutional regimes that provide for it.

21. The Honorable Court's elaboration on these issues would allow for an understanding of when impeachment proceedings are validly exercised and when they are used improperly. The latter could occur when impeachment proceedings are implemented to hold a president politically accountable in order to obtain his or her removal and, potentially, disqualification from public office, which would not seem to correspond to the nature of the "quasi-judicial" parliamentary proceeding in the terms put forth previously.

22. The Commission believes it important that the Honorable Court, in light of the multiple provisions of the American Convention and the American Declaration indicated in the respective section of this request, elaborate on the special protection provided to the president in presidential and "parliamentarized" presidential regimes, and whether this special protection means that the president is exempt from any political responsibility for his or her acts or decisions (for which, in some countries, other high-level officials may be held accountable) and may solely be subject to impeachment for crimes specified in the constitution or serious constitutional violations. Thus, the Commission deems it appropriate to consult with the Inter-American Court whether in cases where a president is subject to impeachment proceedings to hold him or her accountable for political reasons, be this done explicitly or surreptitiously, or for grounds other than those provided for in the constitution, would this constitute a kind of parliamentarian "coup d'état" that would be anomalous and invalid in presidential and "parliamentarized" presidential political systems.

23. Preliminarily, the Commission would like share with Court that in its opinion, the special protection provided to the president, which restricts the use of impeachment only to grounds and situations provided for in the constitution, would be justified given the principle of separation of powers, as well as the fact that he or she is the highest-ranking official of the system (head of state and government), and is popularly and democratically elected. As such, the potential ousting of the president should not be left to a discretionary political decision of congress or parliament (as is the case with a vote of no confidence), but rather, it should require verification of the existence of crimes or offenses provided for in the constitution.

24. Although this would be the rule that corresponds to the nature of impeachment that we find in different constitutional systems on our continent, some doubt may arise specifically in the case of Argentina (Article 53 of its constitution) and Paraguay (Article 225) where in addition to referring to grounds based on crimes committed in the exercise of duties or common crimes, there is an express reference to "poor performance" in office. A dimension that is important for the Court to clarify is whether grounds of this kind would mean that in those countries impeachment of a President would be admissible even for reasons related to political responsibility stemming from doubts about his or her work or performance in office. The Inter-American Court's assessment of this potential understanding in light of the Convention and the American Declaration is extremely important.

25. In principle, the IACHR deems that this would imply an egregious perversion of impeachment and would make it tantamount to a parliamentary vote of no confidence for the president, which could be understood to be inconsistent with a presidential system and even a "parliamentarized" presidential system, where the president is not responsible politically, while other high-ranking officials may be held accountable. Thus, the IACHR believes it is important for the Court to be able to evaluate, in light of the instruments mentions, the risk of such grounds as "poor performance" in office, bearing in mind this could be understood as some serious functional or personal misconduct on the part of the President, which without constituting a crime, would involve acts or

behaviors that are morally reprehensible or offend decency and severely undermine the dignity that correspond to such a high office.

26. Given the foregoing, this request will allow the Court to determine whether in a situation where a parliamentary majority (which generally is a two-thirds or half plus one vote) approved charging and removing the president from office in impeachment proceedings, formally adducing some grounds of a criminal nature, but concealing motives related to doubts about the president's work or political performance, if this would mean the concept of impeachment is being applied to exercise a kind of vote of no confidence in the leader of the government; this, despite the fact that he or she was democratically elected by the people and congress lacks that competence in a presidential or "parliamentarized" presidential system inasmuch as under those systems the President is not politically accountable to parliament. Some of the questions posed to the Honorable Court seek to obtain an interpretation in this respect, including the impact on political rights both from an individual as well as a collective perspective.

27. The fact is that in recent years these kinds of impeachment proceedings have taken place in several Latin American countries, resulting in the removal of the president. This could mean that continuity as president, an office elected by popular vote for a pre-determined term of government, would end up depending on a favorable parliamentary majority, or on the opposition not obtaining a qualified majority of votes against the president to approve his or her removal, whatever the cause may be. With this, we would have a serious change in the rules of the game of the presidential democratic regime itself, as it would allow for a kind of "parliamentary coup d'état" or politically-motivated vote of no confidence against the president.

28. It is also necessary for the Court to clarify whether in impeachment proceedings brought against a president, dimensions such as the respect for due process, verification of the grounds invoked, and the potential sanctions of removal and disqualification are subject to review and oversight by the courts, even if the national constitution of some countries may stipulate that the decision to bring impeachment proceedings, as well as the results of such proceedings, are not subject to judicial review and constitute political matters that are not justiciable.

III. RULINGS OF THE INTER-AMERICAN COURT REGARDING IMPEACHMENTS

29. As from its initial jurisprudence, both adjudicatory and advisory, the Inter-American Court has interpreted the scope of the guarantees of due process and the principle of legality, as well as its different scopes of application.

30. In this sense the Court has indicated that the set of minimum guarantees is not limited to criminal matters, but rather, to the contrary, must be observed in all proceedings, be they of a civil, labor, fiscal, or other nature, so that individuals may defend themselves appropriately in any kind of act emanating from the State that could affect their rights and obligations.⁷ In the development of its jurisprudence, the Court has specified that any public authority, whether administrative, legislative, or judicial, whose provisions may affect the individual rights, is to adopt such decisions fully respecting the guarantees of legal due process. Specifically, as regards matters that involve sanctions, the Court has

⁷ I/A Court H.R. Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; I/A Court H.R. Judicial Guarantees in States of Emergency (Arts. 27(2), 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.

referred to the array of minimum guarantees set forth in Article 8(2) of the Convention to affirm that individuals subject to proceedings that may carry a sanction must have said minimum guarantees, which are applied *mutatis mutandi* as appropriate.⁸

31. The Inter-American Court has held that under the rule of law, the principle of legality governs the actions of all bodies of the State, in their respective competences, particularly when it is a question of exercising punitive power.⁹ The Court has emphasized in this regard that in a democratic system it is essential to exercise extreme caution so that the outcomes of proceedings that carry a sanction are adopted in strict adherence to the basic rights of individuals and after a thorough verification of the effective existence of the illegal conduct.¹⁰

32. The Inter-American Court has heard multiple cases regarding the exercise of the State's punitive power, which is not limited to criminal matters, rather to any proceedings that may be understood to be of a punitive nature. This jurisprudence has essentially focused on the right to a fair trial and the principle of legality.

33. As part of that jurisprudence, and in keeping with what is relevant for this request for an advisory opinion, the Commission notes that the Honorable Court has issued rulings on impeachment proceedings on two occasions, both regarding the dismissal of members of high courts through such proceedings. To this point, the Commission sums up the main aspects of those rulings.

1. Case of the Constitutional Court v. Peru (2001)

34. On January 31, 2001, the Inter-American Court handed down a judgment in the case of the Constitutional Court v. Peru, related to the impeachment and removal of the Constitutional Court justices Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsano.¹¹

35. In said case, the Court defined the construct of impeachment as “a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature.”¹² Nevertheless, it clarified that “However, this control does not mean that the organ being controlled – in this case the Constitutional Court – is subordinate to the controlling organ – in this case the Legislature;

⁸ I/A Court H.R. Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010. Series C No. 218, para. 142.

⁹ See also: I/A Court H.R. Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 177; I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Judgment of February 2, 2001. Series C No. 72, para. 107; I/A Court H.R. Case of De la Cruz Flores v. Peru. Judgment of November 18, 2004. Series C No. 115, para. 80; I/A Court H.R. Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 90; and I/A Court H.R. Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 187.

¹⁰ See also: I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Judgment of February 2, 2001. Series C No. 72, para. 106; Citing, *inter alia*, Eur. Court H.R. Ezelin judgment of 26 April 1991, Series A no. 202, para. 45; and Eur. Court H.R. Müller and Others judgment of 24 May 1988, Series A no. 133, para. 29. See also: I/A Court H.R. Case of De la Cruz Flores v. Peru. Judgment of November 18, 2004. Series C No. 115, para. 81; and I/A Court H.R. Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 189.

¹¹ I/A Court H.R. Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 1.

¹² I/A Court H.R. Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 63.

but rather that the intention of the latter is that an organ that represents the people may examine and take decisions on the actions of senior officials.”¹³

36. In this sense, even in the exercise of this authority of Congress to conduct impeachment proceedings, which will engage the responsibility of a public official, the Court held that any person subject to a proceeding of any nature “must be guaranteed that this organ is competent, independent and impartial and that it acts in accordance with the procedure established by law for hearing and deciding the case submitted to it.”¹⁴

37. Thus, pursuant to the role and the authority that the victims exercised, the Court noted that, under the circumstances of the specific case, “the Legislature did not have the necessary conditions of independence and impartiality to conduct the impeachment proceeding against the three justices of the Constitutional Court.”¹⁵ In line with this, the Court concluded that the impeachment proceedings to which the removed justices were subject did not ensure them the guarantees of due legal process and did not comply with the requirement of impartiality of the judge.¹⁶ In particular, the I/A Court H.R. held that: (i) there were restriction placed on the justices right to defend themselves and answer the allegations filed against them; (ii) the accused did not have a complete and timely knowledge of the charges files against them; (iii) their access to evidence was limited; (iv) the period granted for exercising their defense was extremely short, considering that, as all accused persons, they had the right to examine the case and the evidence; and finally (v) the accused justices were not allowed to cross-examine the witnesses whose testimonies formed the basis on which the members of Congress initiated the impeachment proceeding that ended with the consequent dismissal.¹⁷

2. Case of **Camba Campos et al. (Constitutional Tribunal) v. Ecuador (2013)**

38. On August 28, 2013, the Inter-American Court issued its judgment in the case of *Camba Campos et al. (Constitutional Tribunal) v. Ecuador* regarding the arbitrary dismissal of eight justices of the Constitutional Tribunal of Ecuador pursuant to a Resolution of the National Congress of November 25, 2004. As it pertains to the request at hand, said case also involved two impeachment proceedings against some of the justices in which the victims were not afforded minimum guarantees of due process.¹⁸

39. The Court upheld the general criteria used in the case of the *Constitutional Court v. Peru*, cited above. Thus, it recalled that the guarantees established in Article 8 of the American Convention imply that “the victims must have ample possibilities of being heard and acting in the

¹³ I/A Court H.R. *Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 63.*

¹⁴ I/A Court H.R. *Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 77.*

¹⁵ I/A Court H.R. *Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 84.*

¹⁶ I/A Court H.R. *Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 81.*

¹⁷ I/A Court H.R. *Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 83.*

¹⁸ I/A Court H.R. *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 1.*

respective proceedings, so that they may submit their claims and present probative elements, and that these are analyzed completely and rigorously by the authorities before a decision is taken on the facts, responsibilities, sanctions, and reparations.”¹⁹

40. Under the circumstances of this case, the Inter-American Court concluded, among other things, that: (i) the National Congress was not competent to take the decision to terminate the judges,²⁰ (ii) the National Congress did not ensure the judges who were dismissed the guarantee of impartiality;²¹ (iii) the judges were removed from office without having the possibility of appearing before the National Congress to respond to the charges that were being made against them, or to contest the arguments based on which they were terminated;²² and (iv) there was no clarity as to when the impeachment proceeding started and when it ended.²³

41. On this occasion, the Inter-American Court also referred to Article 23 of the American Convention that regulates political rights. In this respect, it indicated that Article 23(1)(c) does not establish the right to have access to public office, but rather to do so “under general conditions of equality.” This is complied with when “the criteria and processes for appointment, promotion, suspension, and dismissal are objective and reasonable” and “no one is subject to discrimination” in the exercise of this right.²⁴

42. In sum, the Inter-American Court determined that:

(i) respect for judicial guarantees entails respect for judicial independence; (ii) the dimensions of judicial independence result in the subjective right of the judge that his removal from office is exclusively for the causes permitted, either by means of a procedure that complies with judicial guarantees or because the term or period of his mandate has ended, and (iii) when the permanence of judges in office is arbitrarily affected, the right to judicial independence established in Article 8(1) of the American Convention is violated, in conjunction with the right of access to and permanence in

¹⁹ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 181; I/A Court H.R. Case of Baldeón García v. Peru. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 146; and I/A Court H.R. Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations, and Costs. Judgment of October 13, 2011. Series C No. 234, para. 120.

²⁰ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 180.

²¹ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 220.

²² I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 183.

²³ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 185.

²⁴ I/A Court H.R. Case of Aritz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182, para. 206; I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 194; and I/A Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 138. See also Human Rights Committee, General Comment No. 25, Article 25: Participation in Public Affairs and the Right to Vote, CCPR/C/21/Rev. 1/Add. 7, July 12, 1996, para. 23.

public service, under general conditions of equality, established in Article 23(1)(c) of the American Convention.²⁵

43. In this case, the Inter-American Court also made other observations regarding the political instability in Ecuador at the time of the Constitutional Tribunal justices' dismissal. The Court recalled and developed standards on judicial independence, separation of powers, and democracy, analyzing the extent to which "the collective termination of judges, particularly of high courts, constitutes an attack not only on judicial independence but also on the democratic order"²⁶.

44. In this respect, and taking into consideration the context of the abovementioned situation,²⁷ the Court noted that:

[...]the apparent legality and justification of these decisions concealed the intention of a parliamentary majority to exercise greater control over the Constitutional Tribunal and to facilitate the termination of the justices of the Supreme Court. The Court has verified that the resolutions of Congress were not adopted based on the exclusive assessment of specific factual information and in order to ensure proper compliance with the laws in force, but sought a very different end related to an abuse of power aimed at obtaining control of the Judiciary by different procedures: in this case, the termination and the impeachment proceedings. This resulted in a destabilization of both the Judiciary and the country in general and intensified the political crisis, with the negative effects that this entailed for the protection of the rights of the population. Consequently, the Court emphasizes that these elements allow it to affirm that a collective and arbitrary termination of judges is unacceptable, owing to the negative impact that this has on the institutional aspect of judicial independence.²⁸

45. Citing Article 3 of the Inter-American Democratic Charter²⁹ the Court concluded that "the dismissal of all the members of the Constitutional Tribunal entailed a destabilization of the democratic order that existed at that time in Ecuador, because the attack on the three high courts of Ecuador at that time resulted in a rupture of the separation and independence of the branches of government."³⁰ Finally, the Court underscored that "the separation of powers is closely related not only

²⁵ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 199.

²⁶ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 207.

²⁷ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 211.

²⁸ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 219.

²⁹ Said article provides 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, [...] and the separation of powers and independence of the branches of government."

³⁰ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 221.

to the consolidation of the democratic system, but also seeks to preserve the human rights and freedoms of the people.”³¹

IV. OTHER RULINGS OF THE INTER-AMERICAN COURT ON VIOLATIONS OF HUMAN RIGHTS IN CONTEXTS OF DEMOCRATIC CRISIS

1. Case of López Lone et al. v. Honduras (2015)

46. On October 5, 2015, the Inter-American Court handed down a judgment in the case of López Lone et al. v. Honduras, related to the disciplinary proceedings to which the judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, and Ramón Enrique Barrios Maldonado, as well as the justice Tirza del Carmen Flores Lanza, were subject in order to punish them for their actions and statements regarding the coup d’état in Honduras in June 2009.³²

47. In this case—the facts of which are different from the cases mentioned previously—the Court emphasized that, under international law, the events that occurred in Honduras starting on June 28, 2009, constituted an international wrongful act.³³ During this situation of international illegitimacy of the *de facto* government, the Court noted that disciplinary proceedings were brought against the alleged victims for conducts that, basically, constituted actions that enjoyed international legitimacy against the coup d’état and in favor of the rule of law and democracy.³⁴

48. In the judgment’s considerations, the Court reiterated its jurisprudence on judicial independence³⁵ and its relationship to one of its main corollaries—i.e., the assurance of tenure and stability in office.³⁶ In this same regard, the Court recalled that “the State must guarantee the autonomous exercise of the judicial function as regards both its institutional aspect, that is, in relation to the Judiciary as a system, and also as regards its individual aspect, that is, in relation to the person of the specific judge.”³⁷

³¹ I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 221.

³² I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 1.

³³ I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 152.

³⁴ I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, paras. 152-153.

³⁵ I/A Court H.R. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 23, 2013. Series C No. 266, para. 153, and I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 197.

³⁶ I/A Court H.R. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 23, 2013. Series C No. 266, para. 153; and I/A Court H.R. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268, para. 197.

³⁷ I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 194.

49. Taking into account these considerations, the Court set forth the specific scope of the guarantees of stability and tenure for judges, providing that:

- (i) their removal must be exclusively the result of the permitted reasons, either by means of a procedure that respects judicial guarantees or because their mandate has ended;
- (ii) judges may only be dismissed owing to serious disciplinary offenses or incompetence;
- (iii) any disciplinary procedure against a judge must be decided in accordance with the established norms for judicial conduct in fair proceedings that ensure objectivity and impartiality pursuant to the Constitution or the law.³⁸

50. As for the specific violations suffered by the victims in this case, the Court concluded that: (i) the disciplinary proceedings to which the presumed victims were subjected were not instituted in accordance with the law; (ii) the Judicial Service Council did not have competence and lacked the necessary independence to decide appeals of dismissal rulings by the Supreme Court of Justice; (iii) the way in which the Judicial Service Council was set up to decide the appeals filed by the presumed victims did not provide a sufficient guarantee of its impartiality; and (iv) the Supreme Court of Justice did not provide objective guarantees of impartiality to rule on the presumed disciplinary offenses of the presumed victims, insofar as all the said conducts related to the coup d'état.³⁹

51. On this occasion and given the context in which these disciplinary proceedings took place, the Inter-American Court reiterated the relationship that exists between political rights, freedom of expression, the right of assembly and freedom of association, and that these rights, taken as a whole, make the democratic process possible. It added in this case that:

(...) In situations where there is a breakdown of institutional order following a coup d'état, the relationship between these rights is even clearer, especially when they are all exercised at the same time in order to protest against actions by the public authorities that are contrary to the constitutional order, and to reclaim the return to democracy. Protests and related opinions in favor of democracy should be ensured the highest protection and, depending on the circumstances, may be related to all or some of the said rights.⁴⁰

52. The Court made reference to a "right to defend democracy" and held that this right 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. With respect to freedom of expression specifically, the Court, in addition to reiterating its jurisprudence, taking into account the context of this case, also invoked Articles 3 and 4 of the Inter-American Democratic Charter that underscore the importance of said right in a democratic society.

V. CONCLUSION ABOUT THE IMPORTANCE OF STRENGTHENING STANDARDS

³⁸ I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 200.

³⁹ I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 239.

⁴⁰ I/A Court H.R. Case López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 160.

53. Based on the foregoing, it can be seen that although the Inter-American Court has begun to develop standards on some of the issues addressed in this request for an advisory opinion, it has not had sufficient opportunities to flesh them out with the specificity required to provide concrete answers to the questions posed below in the respective section of this document.

54. The Inter-American Court has indicated in general terms that the guarantees of due process must be applied in impeachment proceedings. However, the Commission notes that these rulings are limited to the circumstances of each case, and specifically address the principle of judicial independence, given that the officials subject to impeachment proceedings in those matters were judicial officers of the high courts. Therefore, the Commission understands the analysis of applicable guarantees was informed by the principle of judicial independence, and consequently, the strengthened guarantees for judges subject to the State's disciplinary power.

55. Thus, the Commission believes an express ruling by the Honorable Court is relevant and necessary as to the implications that: (i) the guarantees of due process and the principle of legality have in the context of impeachments against democratically and constitutionally elected presidents; (ii) the arbitrary use of impeachments as a disguised coup d'état have on the exercise of human rights, from a perspective that transcends a particular person and extends to the people under the jurisdiction of the State.

VI. INDIVIDUAL PETITIONS PENDING BEFORE THE IACHR

56. The Commission informs the Inter-American Court that in recent years it has received individual petitions in three matters that could be understood to be related to this request for an advisory opinion: (i) the alleged violations of Manuel Zelaya's and other individuals' human rights in the context of the coup d'état in Honduras; (ii) the alleged violations of Fernando Lugo's human rights in the context of the impeachment proceedings conducted against him; and (iii) the alleged violations of Dilma Rousseff's human rights in the context of the impeachment proceedings conducted against her.

57. The IACHR notes that on January 25, 2010 it received the individual petition presented against the State of Honduras regarding the alleged violations of several people's human rights—among them, the former President, Manuel Zelaya—in the context of the coup d'état. On February 1, 2010, the petition was forwarded to the State, in keeping with the applicable provisions of the rules of procedure. Currently, this petition is awaiting a decision on its admissibility.

58. The IACHR further notes that on January 11, 2013 it received the individual petition presented against the State of Paraguay regarding the alleged violations of the human rights of the former President, Fernando Lugo, in the context of the impeachment proceedings brought against him. On June 17, 2015, the petition was forwarded to the State, in keeping with the applicable provisions of the rules of procedure. Currently, this petition is awaiting a decision on its admissibility.

59. The IACHR also notes that on August 10, 2016, it received the individual petition presented against the State of Brazil regarding the alleged violations of the human rights of the former President, Dilma Rousseff, in the context of the impeachment proceedings brought against her. This petition is currently under study.

60. The Commission deems that the existence of these petitions it has taken cognizance of does not exclude the Honorable Court's advisory competence to rule on this request. The Commission

clarifies that the questions raised by the Commission do not refer to any matter or state in particular. To the contrary, the idea behind this request for an advisory opinion is to transcend the specificities of concrete cases and allow for a general approach. This has important implications for all States in the region as regards human rights and democracy, through the lens of the issues raised on this occasion. Furthermore, due to the very limitations on both the Commission's and the Court's adjudicatory competence, it would be impossible through the aforementioned petitions to respond to the questions posed below as these questions far exceed the scope of the petitions.

VII. QUESTIONS

A. General

1. In light of the American Convention on Human Rights and other applicable inter-American instruments, how does the relationship between the democratic system and full respect for human rights manifest itself?
2. What is the relationship between the American Convention on Human Rights, the American Declaration of the Right and Duties of Man, and the Inter-American Democratic Charter?
3. To what extent, if at all, does the Inter-American Democratic Charter constitute an instrument to support the interpretation and application of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man in specific cases where violations of human rights are alleged in contexts of fragility or interruption of democratic institutions?

B. Impeachment proceedings against democratically and constitutionally elected presidents

1. What specific guarantees of due process, provided for in Article 8 of the American Convention on Human Rights and Article XVIII of the American Declaration of the Rights and Duties of Man are enforceable in impeachment proceedings conducted by the legislative branch against democratically and constitutionally elected presidents?
2. How does the right to judicial protection provided for in Article 25 of the American Convention on Human Rights and Article XVIII of the American Declaration of the Rights and Duties of Man apply to impeachment proceedings conducted by the legislative branch against democratically and constitutionally elected presidents?
 - 2.1 To what extent, if at all, do Article 25 of the of the American Convention on Human Rights and Article XVIII of the American Declaration of the Rights and Duties of Man require judicial oversight over the procedure used by the legislative branch to impeach democratically and constitutionally elected presidents?
 - 2.2 To what extent, if at all, do Article 25 of the of the American Convention on Human Rights and Article XVIII of the American Declaration of the Rights and Duties of Man require judicial oversight over the outcome of impeachment proceedings

conducted by the legislative branch against democratically and constitutionally elected presidents?

2.3 How can it be ensured in practice that the scope and application of judicial oversight referenced above do not jeopardize the principle of separation of powers and the system of checks and balances in a democracy?

3. How does the principle of legality established in Article 9 of the American Convention on Human Rights apply to impeachment proceedings conducted by the legislative branch against a democratically and constitutionally elected president?
4. Does the principle of legality established in Article 9 of the American Convention on Human Rights require that there be previously established and clearly defined grounds in order for the legislative branch to bring impeachment proceedings against a democratically and constitutionally elected president?
5. In light of the principle of legality established in Article 9 of the American Convention on Human Rights, what must be the nature of the grounds that substantiate impeachment proceedings conducted by the legislative branch against a democratically and constitutionally elected president? Do these grounds regard political, disciplinary, or another kind of responsibility?
6. Under what circumstances could impeachment proceedings conducted by the legislative branch against a democratically and constitutionally elected president be a violation of the political rights of the individual impeached, in light of Article 23 of the American Convention on Human Rights and Article XX of the American Declaration of the Rights and Duties of Man?
7. Under what circumstances could impeachment proceedings conducted by the legislative branch against a democratically and constitutionally elected president be a violation, from a collective perspective, of the political rights of the persons who voted for the individual impeached, in light of Article 23 of the American Convention on Human Rights and Article XX of the American Declaration of the Rights and Duties of Man?
8. What safeguards must exist both in regulations and in practice to prevent impeachment proceedings conducted by the legislative branch against a democratically and constitutionally elected president from being used as a disguised coup d'état?

October, 2017