

Press Release

Inter-American Court of Human Rights

I/A Court H.R._PR-141/2020 English

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I/A Court H.R. Protecting Rights

ADVISORY OPINION ABOUT THE OBLIGATIONS IN MATTERS OF HUMAN RIGHTS OF A STATE THAT HAS DENOUNCED THE AMERICAN CONVENTION ON HUMAN RIGHTS AND THE CHARTER OF THE ORGANIZATION OF AMERICAN STATES

San Jose, Costa Rica, December 16, 2020. - On November 9, 2020, the Inter-American Court of Human Rights ("the Court") handed down an Advisory Opinion on States that has denounced the American Convention on Human Rights and the Charter of the Organization of American States and the effect of denunciation on that State's human rights obligations; the opinion was released today. The request was lodged by the State of Colombia. The Spanish-language text of the Advisory Opinion can be found [here](#) (Only in Spanish).

The Court first held that, as a general rule, any denunciation of an international treaty must adhere to the terms and conditions given in the provisions of the treaty text itself. It noted that denunciation of the American Convention was a backward step in the capacity for Inter-American protection of human rights and in achieving universal application of the Inter-American System. The Court further found that denunciation of the American Convention cannot take effect immediately. Specifically, article 78(1) requires a one-year transition period during which the States Parties to the Convention have an opportunity, as collective guarantors of the American Convention, to avail themselves of the institutional facilities of the OAS to express their views or objections in the interest of safeguarding the effective protection of human rights and the principle of democracy. This could prevent an attempt to use denunciation as a bad-faith attempt to sidestep international human rights commitments, reduce or abridge the effective protection of such rights, weaken access to the international judicial mechanism, and deprive the people of complementary protection by the Inter-American System.

The Court stressed the need to apply more rigorous scrutiny to denunciations if they are made in situations that appear to be especially serious and could end up undermining democratic stability, security and peace in the hemisphere. Human rights in such circumstances could suffer the following widespread injury: (1) if the move stems from disagreement with a decision made by the protection body and is motivated by a manifest will to breach international commitments adopted therein; (2) in a scenario in which guarantees have been suspended indefinitely or which threatens the irrevocable nucleus of rights; (3) in a context of serious, massive or systematic violations of human rights; (4) in the framework of progressive erosion of democratic institutions; (5) if democratic order has been disturbed or has come under manifest, irregular or unconstitutional rupture, and/or (6) in the event of an armed conflict.

In particular, the Court held that, when a Member State of the OAS denounces the American Convention on Human Rights, its international human rights obligations stand as follows: (1) Convention-based obligations remain intact during the period of transition to full denunciation; (2) definitive denunciation of the American Convention produces no retroactive effects; (3) the

validity of obligations established through ratification of other inter-American human rights treaties remains in place; (4) the definitive denunciation of the American Convention does not waive the domestic effectiveness of principles derived from Convention-based precepts interpreted as a standard for the prevention of human rights violations; (5) obligations associated with the minimum threshold of protection through the Charter of the OAS and the American Declaration remain within the oversight of the Inter-American Commission; and (6) customary standards, as derived from general principles of international law and pertaining to *jus cogens*, continue to bind the State by virtue of general international law.

In the second place, the Court examined the implications of denunciation and withdrawal from the Charter of the OAS in terms of its impact on international human rights obligations embodied in the Charter. In this regard, the Court emphasized that denunciation of the OAS Charter and withdrawal from the Organization would render the people under the jurisdiction of the denouncing State entirely unprotected by international regional bodies for protection. The Court therefore recalled that the Charter cannot be denounced with immediate effect, which is why the two-year transitional period poses a particular responsibility for the other Member States of the OAS as collective guarantors of its effectiveness regarding respect for human rights. They are bound to speak out on a timely basis, using institutional channels, with comments or objections that they deem relevant in the face of denunciations that do not bear up under scrutiny of the democratic principle and that undermine inter-American public interest, for this is how the collective guaranty is activated.

The Court found that, when a Member State of the Organization of American States denounces the Charter, their international human rights obligations stand as follows: (1) human rights obligations derived from the OAS Charter remain unaltered during the period of transition through to full, definitive denunciation; (2) definitive denunciation of the OAS Charter produces no retroactive effects; (3) the duty to abide by obligations derived from decisions by the human rights protection bodies of the Inter-American System remains in force until compliance is final; (4) the duty to abide by inter-American human rights treaties ratified and not denounced under their own procedures remains in effect; (5) the standards of customary law, those derived from general principles of law and those pertaining to *jus cogens* continue to bind the State by virtue of general international law, and moreover, the duty to abide by the obligations inherent in the United Nations Charter remain in effect.

The Court addressed the concept of collective guaranty and sustained that it transcends the direct interests of each OAS Member State and of all the States as a whole, heightened by the action of the Organization's political bodies; it mandates a series of institutional and peaceful mechanisms for taking swift, collective action to address possible denunciations of the American Convention and/or the OAS Charter in situations in which democratic stability, peace and security may be affected and lead to human rights violations.

The full Spanish text of the Advisory Opinion can be seen [here](#) (Only in Spanish), and the official summary is available [here](#) (Only in Spanish). Judge Patricio Pazmiño Freire presented the Court with his individual consenting opinion and partial dissent. Judge Eugenio Raúl Zaffaroni informed the Court of his individual dissenting opinion.

The Judges sitting on the Court for this Advisory Opinion were: Judge Elizabeth Odio Benito, President, Judge Patricio Pazmiño Freire, Vice president, Judge Eduardo Vio Grossi, Judge Humberto Antonio Sierra Porto, Judge Eduardo Ferrer Mac-Gregor Poisot, Judge Eugenio Raúl Zaffaroni and Judge Ricardo Pérez Manrique.

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