



Policy Dialogue

"Balance of Power and the Safeguarding of Democracy" Reflections on 20th Anniversary of the Adoption of the Inter-American Democratic Charter

Washington, D.C., September 13, 2021

Recommendations for Strengthening the Inter-American Democratic Charter

The exercise of **representative democracy** is the basis of the rule of law and the political structures of the member states of the Organization of American States (OAS). Its strengthening is essential to the social, political, and economic development of the peoples of the Americas and indispensable for achieving stability, peace, and regional development.^{1/}

A crucial element of representative democracy is the **separation and independence of the branches of government**, whose specific powers and competencies provide limits on the exercise of power. Despite the importance of this principle to the rule of law, however, its actual exercise is under constant threat, which jeopardizes the full exercise of democracy in the region.^{2/} The COVID-19 crisis, moreover, has heightened the centralization of power and the level of discretion authorities have in their decision-making. In the absence of clear limits on the other branches of government, the legitimacy of democratic institutions and their actions is at risk.

Considering recent situations in which the principle of separation of powers has been compromised, **strengthening judicial independence** emerges as a priority in the efforts of states and the international community, because the judiciary is the branch responsible for monitoring both the legality of government actions and potential overreaches by the other branches.

Accordingly, as we mark the 20th anniversary of the adoption of the **Inter-American Democratic Charter**, we must assess its application and examine new challenges posed to democratic institutions in the region amid the difficult and turbulent consequences of the COVID-19 pandemic.

The dialogue "Balance of Powers and the Safeguarding of Democracy: Reflections 20 years after the adoption of the Inter-American Democratic Charter" was held by the Summits of the Americas Secretariat in coordination with the Inter-American Commission on Human Rights (IACHR) and the Due Process of Law Foundation on September 13, 2021. The aim was **to promote informed debate and to offer concrete recommendations for strengthening the principle of the separation and independence of powers** as a basis for the full exercise of democracy in the Americas.

This policy dialogue drew upon previous meetings and instruments that address issues of democratic governance in the region, notably the "Lima Commitment: Democratic Governance against Corruption" (Eighth Summit of the Americas, 2018); IACHR resolution 1/2020, "Pandemic and

-
1. Inter-American Democratic Charter, Article 2. Available at: http://www.oas.org/charter/docs/resolution1_en_p4.htm
 2. Inter-American Democratic Charter, Article 3.

Human Rights in the Americas”; and discussions held in May 2021 at the joint CISC-CAJP meeting on Democratic Resiliency, the Role of the Inter-American Democratic Charter, and the Summits Process.

The event brought together officials and leading experts of the region, who exchanged views and proposals on reinforcing implementation of the Democratic Charter and the principle of separation of powers in the Americas. Introductory remarks were given by the Chair of the Summits Process, Mr. Kevin O'Reilly; the OAS Secretary General, Dr. Luis Almagro; the Secretary for Hemispheric Affairs, Ambassador James Lambert; and the Secretary for Strengthening Democracy, Mr. Francisco Guerrero. Closing remarks were given by Mrs. María Celina Conte, Director of the Summits Secretariat.^{3/}

The panel discussion was moderated by Ms. Katya Salazar, Executive Director of the Due Process of Law Foundation. The panelists were experts from academia, civil society, and bodies of the inter-American system, namely Professor Trevor Munroe, Executive Director of National Integrity Action of Jamaica; Mr. Rodolfo Piza, Adviser to the Office of the Secretary General; Mrs. Marieclaire Acosta, Director of Transitional Justice of Mexico and former Deputy Secretary for Human Rights and Democracy of the Mexican Ministry of Foreign Affairs; Mr. Joel Hernández, member of the IACHR; and Mr. Santiago Cantón, Director of the Rule of Law Program of the Inter-American Dialogue and former Executive Secretary of the IACHR.

The topics for the three rounds of discussion were: effective implementation of the Democratic Charter and the separation of powers, recommendations for strengthening the role of justice systems, and joint initiatives to reinforce democracy.

I. Effective implementation of the Democratic Charter and the separation of powers

There was broad agreement that assaults on democracy in the region generally came not from without but from the democratically elected governments themselves. It was proposed to broaden the scope of action of the OAS and that the Organization be more open to civil society and the business and academic sectors. This would yield information with which any erosion of democracy could be quickly noted. Also recommended were greater efforts to disseminate the Charter and democratic values, avoiding technical jargon and promoting understanding among the large populations concerned.

Some panelists agreed that the Inter-American Democratic Charter still faced challenges in preventing the erosion of democracy, in part because it lacked independent follow-up structures. Establishing a complementary mechanism in the Charter and OAS framework was recommended, which should have broad civil society participation and be able to assess the true status of democracy in any state at any time.

Looking beyond monitoring and condemnation, reference was made to the role of diplomacy in supporting and persuading states as they build their commitment to democracy. Reference was made, still, to the need for the OAS to publicize and openly condemn any breaches of democracy.

3. Agenda of the dialogue:
<http://summit-americas.org/jswg/Policy%20Dialogue/2021/balanceofpower.html>;
Video: <https://www.youtube.com/watch?v=89Ys7swYVSA>.

As for strengthening public institutions within states, a similar change of approach was proposed that would focus on international support for states as they build their independent judiciaries. IACHR efforts in this regard were highlighted, involving selection processes for justice operators, development of judicial careers, administrative and financial autonomy for these bodies, development of evaluation processes in keeping with international standards, and the construction of autonomous government bodies within the judiciaries.

Finally, on strengthening the systems of democracy in general, special attention was paid to the decline in public support for democratic systems as opposed to a more favorable view of populist regimes. It was recommended that an action plan be devised to improve implementation of the Charter, which should contain practical measures to shore up public satisfaction with democracy.

II. Recommendations for reinforcing justice systems

Promoting a culture of civic participation was deemed vital to preventing executive interference in judicial matters. The teaching of civic values at all levels of education was recommended and the role of the OAS in arranging financing and supporting civil society and educational institutions was highlighted. Noted, still, was the need to distinguish between urgent issues, such as crises of democracy, and important issues, and to the consequent need to act differently in each case.

On the other hand, attention was called to the importance of addressing the tension between majority will and judicial independence. Emphasis here was placed on the need for civic support in dealing with advances by other branches of government, seeking equilibrium when rights are in conflict and preventing the replacement of legislative or executive functions or the advancement of agendas to which judges are sensitive, but which lack societal support.

Some panelists noted a lack of public familiarity with inter-American standards of judicial independence. It was recommended that the IACHR compile such information for availability to the public and that discussions of best practices be held.

Also recommended was continuing work on the effects of the IACHR reform, with greater attention to precautionary measures when access to justice or judicial independence is severely attacked. It was proposed that the role of the IACHR in strengthening democracy should remain under discussion and that issues such as precautionary measures be addressed.

Other speakers focused on the diverse levels of commitment to democracy in the various states. They recommended a combination of OAS tools to reinforce the judiciaries more effectively: on the one hand, raising awareness of the human rights situation in certain countries; and, on the other hand, assisting states in strengthening judicial systems, such as in the nomination of judges.

III. Joint initiatives to reinforce democracy

It was recommended that the next Summit of the Americas develop an action plan focused on the preventive aspects of safeguarding democracy. It should promote technical cooperation to foster

cultural changes, with increased civic education and citizen participation, so as to prevent authoritarian attacks. The plan of action should also strengthen ties with civil society organizations.

Also discussed was the need to emphasize the practical utility of democracy to people. The plan, therefore, should link democracy to issues that matter to people and highlight how this form of governmental organization is tied to optimal coexistence and economic development.

Civil society in general, and think tanks in particular, were also called upon to continue addressing issues of democracy and the balance of powers and to submit proposals for the next Summit of the Americas.

Closing remarks

The Director of the Summits Secretariat, Mrs. Maria C. Conte, thanked the officials and experts for their valuable contributions. She noted that this forum helps to enhance the outcome of the special joint CISC-CAJP meeting of the OAS Permanent Council held in coordination with the Summits Secretariat last May, on the occasion of the 20th anniversary of the adoption of the Inter-American Democratic Charter. She noted that the Charter was conceived as an important regional instrument for safeguarding democratic gains and that the present situation in the Americas makes such assessments of its application and of the new challenges facing the system of institutions essential. She said the Ninth Summit affords a propitious and necessary opportunity to further these discussions in support of the collective defense of democracy in the region.