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**Referencia:** Observaciones a la solicitud de opinión consultiva presentada por la República de Guatemala a la Corte Interamericana de Derechos Humanos sobre la democracia y su protección.

Respetado Dr.,

Por medio de la presente comunicación nos dirigimos a usted, y por su digno intermedio, a la Honorable Corte Interamericana de Derechos Humanos, con el fin de presentar observaciones a la solicitud de opinión consultiva de la República de Guatemala sobre la democracia y su protección, de conformidad con el artículo 64.1 de la Convención Americana sobre Derechos Humanos.

Atentamente,

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Jeffrey Vogt, Chair  
ILAW Network

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## **I. Introduction**

The International Lawyers Assisting Workers (ILAW) Network is represented here by its Director, Jeffrey Vogt, and by Professor Angela Cornell, a leading scholar on the nexus between labor rights and democracy. The ILAW Network is a membership organization composed of over 1,425 trade union and workers’ rights lawyers in over 100 countries – including throughout the Americas. Its mission is to unite legal practitioners and scholars in an exchange of information, ideas and strategies in order to best promote and defend the rights and interests of workers and their organizations.<sup>1</sup> The ILAW Network has a strong interest in ensuring that national legal systems comply with international human rights, especially those related to labor rights.

We submit for the consideration of the Inter-American Court of Human Rights this amicus brief in relation to the request for an advisory opinion submitted by the Republic of Guatemala on December 6, 2024 as to the question: *“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?”*<sup>2</sup>

From the outset, we recognize that this question, as a matter of international law, has been a contentious one and is the subject of considerable and ongoing debate. Some states have previously raised the concern that such a right could form the basis of or excuse for an act of aggression by one state seeking to impose a certain political order on another state. Still others have expressed concern that such a right, if defined too narrowly or rigidly, could limit the scope of democratic states to pursue certain policies or programs, including those which might in fact enjoy the support of a majority of their populations. At the same time, we note that the principle of democracy is already protected in several Inter-American instruments and in the caselaw of the Court. It appears that for the Americas, the question is largely settled in the abstract, if the exact scope of the right is still to be determined.

Our aim therefore in this amicus brief is to emphasize that the scope of any “right to democracy” should not be limited to guarantees, substantive and procedural, as they relate to individual participation in formal political processes or in the formation of and participation in political parties – though these are of course important. We argue that in order for democracy to be meaningful, all people must be able to participate fully in not only civil and political life, but also economic, social and cultural life. In particular, the democratization of economic decision-making, whether in the private or public spheres, is necessary for the full realization of

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<sup>1</sup> See [www.ilawnetwork.com](http://www.ilawnetwork.com). The ILAW Network has submitted amicus briefs in several previous advisory proceedings before this Court as well as in one contentious case.

<sup>2</sup> [https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2025\\_spa.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2025_spa.pdf)



democracy. Indeed, that is why there is a clear link between income inequality and the erosion of democratic life.<sup>3</sup>

The protection of the right to freedom of association and to bargain collectively for *all workers* is essential to sustaining a democratic society; it is through the exercise of these rights that workers and unions can address the drivers of poverty and inequality – which are highly corrosive to democracy. As such, we suggest that the Court’s advisory opinion should recognize a right to democracy based on the fulfillment of economic, social and cultural rights, and in particular the ILO fundamental principles and rights at work. Thus, it is critical that independent trade unions are free, without interference or intimidation, to negotiate with public and private sector employers over the terms and conditions of employment. Without democratizing the workplace, a robust democracy can never take root in the society as a whole. Of course, the role of trade unions extends beyond the bargaining table. As a representative of working people generally, trade unions are important interlocutors that engage in social dialogue with governments on broader issues that affect not only their members but society at large.

Furthermore, the right to non-discrimination in occupation and employment, and the right to equal pay for work of equal value are also bedrock principles of a vibrant democracy. The exclusion of any group of workers from a democracy only serves to weaken it.

We recognize that the request for an advisory opinion comes at a time when authoritarianism is on the rise worldwide, and liberal democracies are facing some of their greatest challenges in generations. This is true also for the Americas, where the failure of existing political institutions to allow for meaningful participation in decision-making or to deliver the basic material conditions necessary for a dignified life has fueled widespread discontent. This was a foreseeable consequence of neoliberal economic globalization, which significantly weakened the bargaining power of trade unions and strengthened the power of business to influence nearly all aspects of life. The slide toward authoritarianism must be addressed. The best role for the Court in this case would therefore be to define a right to democracy “from below”, and which facilitates the right of people, collectively, to reclaim their future.

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<sup>3</sup> Eil G. Rau and Susan C. Stokes, “Income Inequality and the Erosion of Democracy in the Twenty-First Century,” *Proceedings of the National Academy of Sciences*, 122 (1), e2422543121, December 2024; Susan Stokes, “Investing in Democracy Means Fighting Income Inequality,” Friedrich Ebert Stiftung, 2025.



## **II. The Linkage Between Industrial and Political Democracy**

There is a long-recognized linkage between workplace democracy and political democracy.<sup>4</sup> In the late 19<sup>th</sup> century, the dehumanizing working conditions of industrialization gave rise to a movement to address the “labor question,” the “constitutive moral, political, social dilemma of the new industrial order.”<sup>5</sup> In 1897, Sidney and Beatrice Webb analyzed the function of unions in their classic work, *Industrial Democracy*, arguing that political democracy was incompatible with autocratic dominance in the workplace and the “unrestrained capitalist enterprise”.<sup>6</sup> A few years later with the abuses of industrial capitalism surging, the U.S. Commission on Industrial Relations was charged by the U.S. Congress with investigating labor disruptions and concluded that the causes were: 1) unjust distribution of wealth and income; 2) unemployment and denial of the opportunity to earn a living; 3) denial of justice and workers view that the law was used to oppress them; and 4) significant obstacles to their ability to organize.<sup>7</sup> The Commission concluded that, “Political freedom can exist only where there is industrial freedom, political democracy only where this industrial democracy.” Its key recommendation was the improvement and protection of the organization and representation of workers with the principle of industrial democracy.<sup>8</sup>

Indeed, organized labor has played a crucial role in constructing, deepening, and defending democracy.<sup>9</sup> Extensive cross-regional research and empirical studies have demonstrated that the organized working class has been the “primary carrier of democracy, playing a decisive role in the forging of democratic regimes” and the “most consistently prodemocratic force. . .”<sup>10</sup> Scholars have described the unique role and capacity of organized labor in the struggle against authoritarianism. The importance of organized labor and labor-related parties is documented in Ruth Collier’s comparative work on twenty-one countries in Western Europe and South America.<sup>11</sup> When combined with other class actors and civil society, the labor movement has been instrumental in democratic transformation.<sup>12</sup>

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<sup>4</sup> Wilma Liebman, “Industrial Democracy in the United States, Past and Present,” 117-126, in *The Cambridge Handbook of Labor and Democracy* (Angela B. Cornell & Mark Barenberg, eds. 2022).

<sup>5</sup> *Ibid.* at 117.

<sup>6</sup> Sidney and Beatrice Webb, *Industrial Democracy*, 841-842 (1897).

<sup>7</sup> Liebman, *supra* n. 4, citing U.S. Commission on Industrial Relations Final Report, 29-68 (1916).

<sup>8</sup> *Ibid.*, 17-18.

<sup>9</sup> Dietrich Rueschemeyer, et al, *Capitalist Development and Democracy* (1992); *The Cambridge Handbook of Labor and Democracy* (Angela B. Cornell & Mark Barenberg, eds. 2022).

<sup>10</sup> Ruth Berins Collier, *Paths Toward Democracy: The Working Class and Elites in Western Europe and South America* (1999), 10-12 citing Rueschemeyer et al.

<sup>11</sup> *Ibid.*

<sup>12</sup> Paul Drake, *Labor Movements and Dictatorships: The Southern Cone in Comparative Perspective* (1996).



As a force against autocracy, organized labor is “the segment most experienced at resisting antithetical governments, and the most daring and durable class-based proponents of democratization.”<sup>13</sup> J. Samuel Valenzuela describes the unique role played by organized labor among civil society organizations in the struggle against autocracy and asserts that, “at a certain point virtually all processes of redemocratization include a sharp increase in labor movement activism through strikes and demonstrations, usually in conjunction with a broader upsurge of mobilization by a wide variety of groups.”<sup>14</sup>

Organized labor has unique capacity and strengths in democratic struggles as the “biggest mass organizing movements to counter state coercion giving them an unparalleled position when compared to other social and political groups.”<sup>15</sup> Organized labor is the most densely organized sector in civil societies that are otherwise fragmented. The union infrastructure is an important way to connect with local communities around the country, and it includes both national leadership and local grassroots actors, which other civil society groups typically lack. These permanent structures and network linkages with local unions can provide an infrastructure for opposition activities.<sup>16</sup> Solidarity among union members and shared interests are fostered within “schools of democracy” that helps to educate workers and strengthen bonds.<sup>17</sup>

In the struggle for democracy, the associational power of the working class has long been a vehicle for positive change. Unions have used strikes not just to advance their members’ economic interests, i.e. their class interests, but also to advance broader societal goals of democracy and human rights. Organized labor has been a tremendous pro-democracy force both historically and contemporarily.<sup>18</sup> It has been recognized for its “greater capacity for extensive and effective mobilization at critical moments than other social groups.”<sup>19</sup> Organized labor is “the most experienced at resisting antithetical governments and the most daring and durable class-based proponent of democratization.”<sup>20</sup>

Most democratic transitions were successful on the heels of strike waves and mass protest activity.<sup>21</sup> When labor joins with other civil society organizations, it can lead to an upsurge in

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<sup>13</sup> Ibid, 2.

<sup>14</sup> J. Samuel Valenzuela, *Labor Movements in Transitions to Democracy: A Framework for Analysis*, Comparative Politics, 445 (1989).

<sup>15</sup> Mohammad Ali Kadivar, *Popular Politics and the Path to Durable Democracy*, 10 (2022).

<sup>16</sup> Valenzuela, *supra* n. 14 at 447.

<sup>17</sup> Clayton Sinyai, *Schools of Democracy: A Political History of the American Labor Movement* (2006).

<sup>18</sup> Cornell and Barenberg; Rueschemeyer, et al, *supra* n. 9.

<sup>19</sup> Drake, *supra* n 12.

<sup>20</sup> Ibid.

<sup>21</sup> Angela B. Cornell & Ruth Dukes, (2025) *Strikes and the Struggle for Democracy*, Comp. Labor Law and Policy J., Vol 45: Iss.2, Article 5; DOI: <https://doi.org/10.60082/2819-2567.1037>



mobilization.<sup>22</sup> This resurgence of civil society at critical junctures can propel change.<sup>23</sup> In Latin American, the contributions of organized labor were nothing less than transformational for the democratization process. The Brazilian labor movement organized a series of massive strikes between 1978 and 1980 that were critical to the push for a return to democratic rule.<sup>24</sup> Labor was the driving force of this campaign and coalesced with other opposition groups. Brazil is a prominent example of “social movement unionism,” where much of labor’s organizing occurred outside the industrial setting, and the focus of collective action included the transition to democracy. Strikes contributed to pushing forward the democratic process.

Organized labor was an important force in the opposition to Argentina’s military dictatorship that held power from 1976 to 1983 and claimed the lives of 30,000 civilians who were killed or forcibly disappeared in the “Dirty War.” In 1982, Argentine labor unions called the first general strike against the military dictatorship that led to massive work stoppages paralyzing much of the country. Most of the industries and public services were shut down to pressure the government for democratic change and against harsh economic proposals. Ten million workers stayed home.<sup>25</sup> Following the coup in Chile in 1973, all political opposition was brutally repressed. The year after the massive general strike in Argentina, the Chilean Copper Miners’ Confederation initiated the first political strike against the Pinochet dictatorship.<sup>26</sup> Mine workers were joined by other civil society organization with tens of thousands participating. This strike triggered wider social movement opposition. Organized labor joined with clandestine political parties, the unemployed and other organizations in years of protests against the dictatorship before the massive protests supporting the “no” vote in the 1988 plebiscite on whether Pinochet should continue as president, which cleared the way for a democratic transition. In 1983, the Uruguayan labor movement led its first mass protests on May Day to end the dictatorship and hold elections.<sup>27</sup>

Today, neoliberal policies of deregulation have eroded the social citizenship gains that sought to address the plight of workers. In recent years, the rise of ethno-nationalist and extreme right-wing parties and leaders are an increasing threat to global democracy. An in depth investigation of the role of work, working conditions, and workers’ voice for anti-democratic attitudes and far right wing voting intention concluded that the world of work is highly relevant in combatting the

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<sup>22</sup> Drake, *supra*, n. 12.

<sup>23</sup> Guillermo O’Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies* (1986).

<sup>24</sup> Cornell & Dukes, *supra*, n. 21.

<sup>25</sup> *Argentines Go on Strike, Defying Military Junta*, NY Times (Dec 7, 1982).

<sup>26</sup> Kenneth Roberts, “Constructing, Deepening, and Defending Citizenship Rights,” in *The Cambridge Handbook of Labor and Democracy*, 40 (Angela B. Cornell & Mark Barenberg, eds. 2022).

<sup>27</sup> *Ibid*; Drake, *supra* n. 12.



rise of right wing extremism.<sup>28</sup> A ten country study in Europe demonstrated that workers’ voice and participating in decision making in the workplace increases satisfaction with democracy and trust in national institutions. The study presented compelling evidence that industrial democracy strengthens democratic commitment. Institutionalized worker representation, including union membership, is a catalyst and “school for democratic learning that create skills that spill over to the political realm.”<sup>29</sup>

Multi-country research on elections in Western Europe involving right-wing ethno-nationalist parties concluded that the unionized working and middle class were less likely to vote for the radical right than the non-unionized, even while the radical right expands its vote share among non-unionized workers.<sup>30</sup> This research found unions diffuse and reinforce values of solidarity among their members and this can effectively counter the exclusionary ideology of the radical right. It also referred to the positive ways in which workers of different origins and nationalities participate together in the union context.

Organized labor’s myriad contributions around the globe to the strengthening of democracy include its impact on reducing inequality. The power resource theory was developed to analyze the institutional role of labor and political parties and redistributive policies using comparative data and that research found that organized labor was a key actor.<sup>31</sup> This work emphasized the role of organized labor as a counterweight to the power of capital in the economic and political arena facilitating distributional policies that benefitted working people and created more egalitarian societies.<sup>32</sup> This theory was also expanded to analyze democracy more broadly and cited above for its emphasis on the organized working class support for democratic change.<sup>33</sup> In an updated and expanded study looking at inequality using cases studies from five countries, the power resource theory illustrates “the organizational and institutional strength of labor continues to exert profound influence on market income inequality”.<sup>34</sup>

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<sup>28</sup> Andrea Hövermann, Bettina Kohlrausch, Arnim Langer, Bart Meuleman, *How Work Shapes Democracy: Political Preferences, Populist Attitudes and Far-Right Voting Intentions Among the European Labor Force. A Cross-Country Survey Project of the 2024 EU Elections*, Hans Böckler Stiftung (2025).

<sup>29</sup> Ibid, Section 5.6.

<sup>30</sup> Nadja Mosimann, Line Rennwald, and Adrian Zimmerman, “The Radical Right, the Labour Movement, and the Competition for the Workers’ Vote,” *Economic and Industrial Democracy*, 40, 1, 65-90 (2019).

<sup>31</sup> Rueschemeyer, et al, *supra* n. 9.

<sup>32</sup> Evelyne Huber and John D. Stephens, *Challenging Inequality: Variations Across Post-Industrial Societies*, University of Chicago Press, 2024.

<sup>33</sup> Rueschemeyer, et al, *supra* n. 9.

<sup>34</sup> Huber and Stephens, *supra* n. 32 at p. 13.



### **III. Inter-American and International Law on the Nexus Between Freedom of Association and Democracy**

#### **A. Inter-American Instruments**

While the American Convention protects the right to freedom of association (Arts 16 and 26), perhaps most relevant instrument in the Inter-American System to trade unions is the “Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: “Protocol of San Salvador”. Article 8 of the Protocol is the fullest statement of trade union rights. We would call the Court’s attention to its Advisory Opinion, OC-22/16 of Feb. 26, 2016, in which it had an opportunity to consider the standing of trade unions to assert their own rights, as well as those of its members, before the Inter-American system. Following a close reading of the Protocol of San Salvador, the Court determined that trade unions did have standing to assert trade union rights before the Inter-American System, at least in those countries which had ratified the Protocol.

In the Court’s analysis, the intersection between freedom of association and democracy were directly addressed.

98. Regarding the object and purpose of the Protocol of San Salvador, the Court points to the preamble, which indicates that the purpose of the protocols to the American Convention is to “progressively include other rights and freedoms.” It also highlights the importance of reaffirming, developing, improving, and protecting economic, social, and cultural rights based on the consolidation of democracy in the Americas, “as well as the right of its peoples to development, self-determination, and free disposal of their wealth and natural resources.” The preamble affirms that the ideal of the free human being can be realized only through the creation of the conditions “whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights”. It maintains that the validity of civil and political rights and economic, social and cultural rights have a close relationship and “the different categories of rights constitute an indissoluble whole that finds its basis in the recognition of the dignity of the human person, for which they demand permanent protection and promotion in order to achieve their full validity.” It follows that the protection of economic, social and cultural rights targeted by the Protocol of San Salvador is intended to safeguard not only human dignity but also, and to the same extent, democracy and the rights of peoples in this hemisphere.

Further, in 2001, OAS member states unanimously adopted the Inter-American Democratic Charter. Importantly, the Charter conceives of democracy beyond the realm of elections and government by majority. The preamble makes two references which are directly relevant to



workers and trade union rights. First, the preamble recognizes that the Protocol of San Salvador “emphasizes the great importance of the reaffirmation, development, improvement, and protection of those rights in order to consolidate the system of representative democratic government.”<sup>35</sup> Trade union rights are specifically protected in the Protocol. More specifically, the preamble recognizes “that the right of workers to associate themselves freely for the defense and promotion of their interests is fundamental to the fulfillment of democratic ideals.”<sup>36</sup> The latter is taken up again specifically in Article 10, which states in full:

The promotion and strengthening of democracy requires the full and effective exercise of workers’ rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.<sup>37</sup>

## **B. Nexus of Fundamental Rights and Democracy in the ILO**

The inter-relationship between democracy and the free exercise of fundamental rights has been recognized since the ILO’s founding in 1919. Meeting at the end of World War I, the founders of the ILO recognized that the conditions which led to and sustained the war included the “hardship and privation to large numbers of people as to produce unrest so great.”<sup>38</sup> From the outset then, the ILO was committed to social justice – which it saw as a necessary condition for lasting peace<sup>39</sup>. In calling for a framework that delivered on dignified conditions of work, including freedom of association, the ILO was not only attempting to create good jobs but setting the foundations of a liberal democratic order based on a social contract that more equitably distributed power within society.

In the waning days of World War II, the ILO was figuratively “re-founded”. The Declaration of Philadelphia, adopted by the International Labour Conference in 1944, expressed the aspirations of the ILO in the post-war era. In Article I, the Declaration reaffirmed its core constitutional principles, including that “the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the

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<sup>35</sup> OAS, Democratic Charter, Preamble, [https://www.oas.org/en/democratic-charter/pdf/demcharter\\_en.pdf](https://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf)

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., Art 10.

<sup>38</sup> ILO Constitution, Preamble.

<sup>39</sup> Ibid.



promotion of the common welfare.”<sup>40</sup> Here, Declaration makes even clearer that the “war on want” requires democratic processes, without which the “common welfare” cannot be achieved. This was, as the ILO Conference stated in 1944, to broaden the principles of the ILO ‘in the light of what ha[d] been learned in the inter-war years’ and for the principles to be ‘restated in a wider context of social and economic democracy’.<sup>41</sup>

This view still holds true today. In 2019, in celebration of the 100<sup>th</sup> anniversary of the ILO, the constituents at the Conference adopted the Centenary Declaration for the Future of Work.<sup>42</sup> The Declaration was informed by a high-level, tripartite Commission on the Future of Work, which published its report in January 2019. Importantly, it found:

Governments and employers’ and workers’ organizations are parties to the social contract, responsible for its design and delivery through social dialogue. Collective representation of workers and employers through social dialogue is a public good that lies at the heart of democracy. It should be encouraged and promoted through public policies. By broadening and localizing decision-making, collective representation improves the quality and legitimacy of decisions and strengthens commitment to their implementation.<sup>43</sup>

The parties underscored in the preamble of the Centenary Declaration the importance of democracy, not only as an end in itself but as it relates to social justice and lasting peace.

[ ] the experience of the past century has confirmed that the continuous and concerted action of governments and representatives of employers and workers is essential to the achievement of social justice, democracy and the promotion of universal and lasting peace<sup>44</sup>

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<sup>40</sup> ILO, Declaration of Philadelphia, Article 1

<sup>41</sup> ‘The Twenty-sixth Session of the International Labour Conference: Philadelphia, April-May 1944’ (July 1944) L(1) Intl Labour Rev. 1, 4.

<sup>42</sup> Considering that the experience of the past century has confirmed that the continuous and concerted action of governments and representatives of employers and workers is essential to the achievement of social justice, democracy and the promotion of universal and lasting peace.

<sup>43</sup> Work for a brighter future – Global Commission on the Future of Work, International Labour Office (Geneva 2019), p. 41, [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@cabinet/documents/publication/wcms\\_662410.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@cabinet/documents/publication/wcms_662410.pdf)

<sup>44</sup> ILO Centenary Declaration for the Future of Work, 108th Sess. (2019), <https://www.ilo.org/about-ilo/mission-and-impact-ilo/ilo-centenary-declaration-future-work-2019>



This was a point also emphasized during the 2019 International Labor Conference. In reporting the outcome of the Committee of the Whole, which was constituted to consider the Centenary Declaration, the Worker Vice-Chairperson explained,

Delegates were reminded that social justice was a precondition for peace, tripartite governance was necessary to establish democracy in the world of work and regulations were essential to ensure a level playing field for the protection of workers against the forces of globalization driving down wages and working conditions.... Workers' rights should be promoted as a key strategy for inclusive and sustainable economic development. It was necessary to strengthen social dialogue and collective bargaining as strong and indispensable building blocks of democracy in the workplace and the world of work at large.<sup>45</sup>

The ILO supervisory systems have also weighed in on the intrinsic and reciprocal link between the right to freedom of association and democracy. For example, the Committee on Freedom of Association, in a case concerning the absolute monarchy of Eswatini, reviewed the decision of the King to deregister the national trade union center for having threatened a boycott of the 2013 national elections unless they were held under a multiparty system. The Committee, in calling for the re-registration of the union, noted that “the Committee must recall that a system of democracy is fundamental for the free exercise of trade union rights.”<sup>46</sup> In this view, democracy is necessary for the enjoyment of labor rights. But the opposite is also true. The Conference Committee on the Application of Standards, in review of Eswatini in 2013, “further recalled the intrinsic link between freedom of association and democracy.”<sup>47</sup>

Following a military coup in Myanmar in February 2021, the ILO Governing Body decided in March 2022 to establish a Commission of Inquiry in respect of non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Forced Labour Convention, 1930 (No. 29). The Commission of Inquiry is the highest level of supervision in the ILO constitutional structure. In the concluding remarks of its 2023 report to the Governing Body, the Commission reflected on the role of democracy as it relates to the ILO. It found that, “freedom of association lies at the heart of democracy and the rule of

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<sup>45</sup> ILO, 108<sup>th</sup> ILC, Record of Proceedings, 2019, pp. 30, 39,  
[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed\\_norm/%40relconf/documents/meeting\\_document/wcms\\_726221.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meeting_document/wcms_726221.pdf)

<sup>46</sup> ILO Committee on Freedom of Association, Case No. 2949 (Eswatini), Report No 367, March 2013,  
[https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3112131](https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3112131)

<sup>47</sup> ILO Committee on the Application of Standards, Eswatini, Convention 87, June 2013,  
[https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3131752,103336,Eswatini,2013](https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3131752,103336,Eswatini,2013)



law and is a prerequisite for social dialogue, collective bargaining and tripartite cooperation.”<sup>48</sup> Here, it is the enjoyment of trade union rights, in particular the right to freedom of association, which is a necessary precondition for democracy.

Similar views have been expressed in the context of Belarus, often referred to as the last dictatorship in Europe. In 2004, a Commission of Inquiry was established concerning widespread violations of the right to freedom of association and to bargain collectively. After nearly two decades of efforts to press the government to improve the situation in the country, the ILO took the extraordinary step to invoke Article 33 of the Constitution, which calls on member states take “such action as it may deem wise and expedient to secure compliance therewith.” During the debate over whether to authorize Article 33, several governments spoke to the issue of democracy. For example, the Polish government, speaking on behalf of a group of states, reflected that “The current discussion reflected the intrinsic links between freedom of association, the respect for universal human rights, and democracy.”<sup>49</sup> The French government supported the adoption of measures provided for in article 33 of the ILO Constitution, as the “repression of trade unions in the country was part of a broader repression against freedom of expression and association and against democracy in general.”<sup>50</sup>

In 2020, the ILO Committee of Experts expressed similar views in its observations on freedom of association in Belarus:

Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers’ organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes.<sup>51</sup>

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<sup>48</sup> ILO, Report of the Commission of Inquiry, Towards Freedom and Dignity in Myanmar, para 638, [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed\\_norm/%40relconf/documents/publication/wcms\\_894548.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/publication/wcms_894548.pdf)

<sup>49</sup> ILO, 111<sup>th</sup> ILC, Record of Proceedings, Geneva, June 2023, para 37, [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_884900.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_884900.pdf)

<sup>50</sup> Ibid., para 53.

<sup>51</sup> ILO, Committee of Experts on the Application of Conventions and Recommendation, [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4060452,103154) (Belarus), published 2021, [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4060452,103154](https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4060452,103154)



From these cases, it is clear that freedom of association and democracy are mutually dependent and reinforcing.

### **C. Nexus of Fundamental Rights and Democracy in Other UN Instruments**

#### **1. UN Bill of Human Rights**

##### **a. International Covenant on Civil and Political Rights (ICCPR, 1966)**

There are two articles of the ICCPR which are particularly relevant. First, Art. 22, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”<sup>52</sup> Further, Art. 25 recognizes and protects the rights of every citizen to take part in the conduct of public affairs. General Comment 25 (1996) of the Human Rights Committee is useful in clarifying the linkage between these two articles.<sup>53</sup> First, the GC recognizes that the ability to organize oneself is important to being able to effectively engage in public affairs and exert influence.

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

Later, the GC again notes that the right to freedom of association is an “essential adjunct” to effective participation in public affairs. While the paragraph below refers directly to the formation of political parties, the logic extends to the right to form trade unions, which also engage in the political arena.

26. The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.

As yet, there is no General Comment on Article 22, though the UN recently issued a call for input on a Draft General Comment No. 38 on Article 22 (Freedom of Association). However, General comment No. 37 (2020) concerns the right of peaceful assembly (article 21). There, GC

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<sup>52</sup> International Covenant on Civil and Political Rights, Mar. 23, 1973, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>53</sup> UN, Human Rights Committee, General Comment No. 25, CCPR/C/21/Rev.1/Add.7, 27 Aug 1996, <https://docs.un.org/en/CCPR/C/21/Rev.1/Add.7>



37 explains in the very first paragraph that “Together with other related rights, [the right to peaceful assembly] also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.”<sup>54</sup> The GC also notes that without freedom of association, freedom of peaceful assembly is not possible, explaining, “The full protection of the right of peaceful assembly is possible only when other, often overlapping, rights are also protected, notably freedom of expression, freedom of association and political participation.”<sup>55</sup>

b. International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)

Article 8 of the Covenant provides that States Parties must ensure, inter alia, the right of everyone to “form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.” Unfortunately, the CESCR has not yet had an opportunity to prepare a General Comment on Article 8. However, several UN Special Rapporteurs on the Right to Peaceful Assembly and Association have issued reports which clarify the relationship between freedom of association and democracy, whether emanating from the ICCPR or the ICESCR.

Maina Kia, the first person to hold the position of UN Special Rapporteur on the Right to Peaceful Assembly and Association, developed in his 2013 report to the General Assembly the linkage between freedom of association and democracy, in particular in paragraphs 4-11 and the role of civil society in sustaining democracy from paragraphs 42-55. Perhaps most relevant here is:

The role of civil society in contributing to and sustaining a robust democracy cannot be underestimated. In different capacities, organizations undertake various activities to advocate for the concerns and interests of their beneficiaries, to contribute to ensuring the integrity of the electoral process, to further contribute to the achievement, protection and strengthening of democratic goals and standards, and to keeping authorities accountable to the electorate.<sup>56</sup>

The third UNSR, Clement Voule, in a report focused on the link between freedom of peaceful assembly and association and sustainable development, explained:

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<sup>54</sup> UN, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly, CCPR/C/GC/37, 17 Sept 2020, <https://docs.un.org/en/ccpr/c/gc/37>

<sup>55</sup> *ibid*

<sup>56</sup> UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/68/299, 7 Aug 2013, para 42, <https://docs.un.org/en/A/68/299>.



In the view of the Special Rapporteur, the rights of freedom of peaceful assembly and of association have both an intrinsic and instrumental value to the efforts to reduce inequality and eradicate poverty. In their instrumental role, these fundamental freedoms are necessary to strengthen social cohesion and democratic governance, as they facilitate constructive dialogue and alliance -building among communities and actors involved in such efforts.<sup>57</sup>

Most recently, UNSR Gina Romero explained in her 2025 report to the General Assembly entitled, “Freedom of assembly and association rights, collective action and human solidarity facing an existential threat”

9. The rights to freedom of peaceful assembly and of association are also a vehicle for the realization of civil, cultural, economic, political and social rights (enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), are essential components of democracy, and enable people to “express their political opinions, engage in ... artistic pursuits ..., engage in religious observances ..., form and join trade unions ..., and elect leaders to represent their interests and hold them accountable.”

## 2. Other Relevant UN Human Rights Sources

Below we draw the attention of the Court to excerpts of relevant UN declarations and resolutions.

### a. Vienna Declaration and Programme of Action (1993)<sup>58</sup>

“8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”

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<sup>57</sup> UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/74/349, 11 Sept 2019, para 10, <https://docs.un.org/en/a/74/349>.

<sup>58</sup> Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (1993), <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>



b. UN General Assembly Resolution A/RES/59/201 (2004)<sup>59</sup>

“Declares that the essential elements of democracy include respect for human rights and fundamental freedoms, inter alia, freedom of association and peaceful assembly and of expression and opinion...”

c. UN Human Rights Council Resolution A/HRC/RES/15/21 (2010)<sup>60</sup>

“Recognizing also that the rights to freedom of peaceful assembly and of association are essential components of democracy, providing individuals with invaluable opportunities to, inter alia, express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable...”

d. UN Human Rights Council Resolution A/HRC/RES/24/5 (2013)<sup>61</sup>

“Recognizing the importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies...”

e. UN Human Rights Council Resolution A/HRC/RES/32/32 (2016)<sup>62</sup>

“Recognizing that the effective exercise of the rights to freedom of peaceful assembly and of association, as enshrined in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, is essential for the enjoyment of other human rights and freedoms and constitutes a fundamental pillar for building a democratic society and strengthening democracy, bearing in mind that all human rights are universal, indivisible, interdependent and interrelated.”

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<sup>59</sup> Resolution adopted by the General Assembly on 20 December 2004, A/RES/59/201, 23 March 2005, <https://docs.un.org/en/A/RES/59/201>

<sup>60</sup> Resolution adopted by the Human Rights Council, A/HRC/RES/15/21, 6 Oct 2010, <https://documents.un.org/doc/undoc/gen/g10/166/98/pdf/g1016698.pdf>

<sup>61</sup> Resolution adopted by the Human Rights Council, A/HRC/RES/24/5, 8 Oct 2013, <https://documents.un.org/doc/undoc/gen/g13/178/33/pdf/g1317833.pdf>

<sup>62</sup> Resolution adopted by the Human Rights Council on 1 July 2016, A/HRC/RES/32/32, 18 July 2016, <https://docs.un.org/en/A/HRC/RES/32/32>



## **VII. Conclusion**

Democracy's global retreat has coincided with an erosion of organizational and political strength of labor unions in much of the world. A right to democracy based on the rights to freedom of association and to bargain collectively is urgently needed. The Americas region is ranked poorly by the International Trade Union Confederation (ITUC) as to its compliance with trade union rights,<sup>63</sup> and it is also the most complained against region before the ILO Committee on Freedom of Association.<sup>64</sup> Throughout the Americas, workers and trade unionists are victims of repression for exercising their fundamental labor rights, including via threats, disappearances, and assassinations. Indeed, the requesting state, Guatemala, has seen over 100 trade unionists murdered in the last 20 years. One of the lasting injustices of the region is the impunity for the ongoing crimes committed against trade union leaders and how that has undermined workers' freedom of association—ultimately weakening democracies.

It is no surprise that the Americas region also stands as one of the most unequal regions in the world today, and one which has continued to struggle to maintain an inclusive, democratic order. Of course, it must be emphasized that marginalized groups, including women, migrants, indigenous populations, African-descendant populations, LGBTQ+ and persons with disabilities often face even greater systemic obstacles to their full democratic participation. Inequality has a corrosive effect on democracy and threatens the sustainability of democratic self-governance.<sup>65</sup> Unions play an important role in reducing inequality and advancing policies that provide a social safety net. That role includes lifting the working class and constraining the income share of the top 1%.<sup>66</sup> This has been more effective in countries with higher union density and broader union power.

There is a critical need to strengthen democracy supporting institutions, including independent labor movements that have demonstrated enormous capacity as a force for democratization,

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<sup>63</sup> ITUC Global Rights Index 2025, [https://www.ituc-csi.org/IMG/pdf/en\\_global\\_right\\_index\\_2025\\_final\\_web.pdf?42561/2dadb6a0c1eacc71d32d3f2f6ef8702cb163d152bd2dc8e5cc9ae3e96e031476](https://www.ituc-csi.org/IMG/pdf/en_global_right_index_2025_final_web.pdf?42561/2dadb6a0c1eacc71d32d3f2f6ef8702cb163d152bd2dc8e5cc9ae3e96e031476)

<sup>64</sup> ILO, Governing Body 353rd Sess., Presentation of the Committee on Freedom of Association annual report for the year 2024, GB.353/INS/14/1(Add.1), 10–20 March 2025, Figs 1 and 2, <https://www.ilo.org/sites/default/files/2025-03/GB353-INS-14-1%28Add.1%29-%5BNORMES-250307-003%5D-Web-EN.pdf>

<sup>65</sup> Eil G. Rau and Susan C. Stokes, *supra* n. 3; Susan Stokes, *supra* n. 3; [Investing in Democracy Means Fighting Income Inequality](#); Henry S. Farber, Daniel Herbst, Ilyana Kuziemko, and Suresh Naidu, "Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data," NBER Working Paper No. 24587 (National Bureau of Economics Research, Cambridge, MA, May 2018; [www.nber.org/paper/w24587](http://www.nber.org/paper/w24587)); Joseph E. Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers Our Future* (2012).

<sup>66</sup> Bruce Western & Jake. Rosenfeld, "Unions, Norms, and the Rise in U.S. Wage Inequality," *American Sociological Review*, 76(4), 513-537 (2011); Huber and Stephens, *supra* n. 32.



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