



**Reasoned
votes *of the*
members
of the
IACHR**

┌ Comments
on Resolution
2/22 and its
implementation
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Due Process
of Law
Foundaton

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INTRODUCTION

On August 8, 2022, the Inter-American Commission on Human Rights (IACHR) adopted Resolution 2/22 to clarify the scope of the reasoned vote¹ provided for in Article 19 of its Rules of Procedure, which have been in force since 1980.² This provision reads as follows:

Article 19

1. Whether or not members agree with the decision of the majority, they shall be entitled to present a written explanation of their vote, which shall be included following the text of that decision.
2. If the decision concerns the approval of a report or preliminary report, the explanation of the vote shall be included following the text of that report or preliminary report.
3. When the decision does not appear in a separate document, the explanation of the vote shall be included in the minutes of the meeting, following the decision in question.
4. The explanation of vote shall be presented in writing to the Secretariat within the 30 days following the period of sessions in which that decision was adopted. In urgent cases, an absolute majority of the members may stipulate a shorter period. Once that deadline has elapsed, and no written explanation of the vote has been presented to the Secretariat, the member in question shall be deemed to have desisted from submitting an explanation of his or her vote, without prejudice to his or her dissent being recorded.³

¹ The terms “reasoned,” “individual,” and “separate” are used interchangeably in this document to describe the votes that each commissioner is empowered to cast in collegial decisions of the IACHR.

² The first three paragraphs of Article 19 were introduced into the 1980 Rules of Procedure of the IACHR, at that time under Article 18, and have remained unchanged since then. In October 2003, the IACHR included a fourth paragraph in Article 19 of the Rules of Procedure, which establishes a 30-day deadline for the commissioner who cast the reasoned vote to submit it.

³ In turn, Article 20 of the IACHR Rules of Procedure establishes the following:

1. Summary minutes shall be taken of each session. They shall state the day and time at which it was held, the names of the members present, the matters dealt with, the decisions taken, and any statement made by a member especially for inclusion in the minutes. These minutes are confidential internal working documents.

2. The Executive Secretariat shall distribute copies of the summary minutes of each session to the members of the Commission, who may present their observations to the Secretariat prior to the period of sessions at which those minutes are to be approved. If there has been no objection as of the beginning of that period of sessions, the minutes shall be considered approved.

The most relevant aspects of Resolution 2/22 are as follows:

- a) All decisions of the IACHR are subject to a separate vote by its members.
- b) Reasoned votes shall be published when the respective decision is recorded in a separate document, applying expressly to “individual petitions and cases; thematic reports; reports on human rights in a State; annual reports; and resolutions of the IACHR.”
- c) Upon a well-founded request by a member, the majority may agree on another modality, timing, and access to the separate vote in order to preserve the object and purpose of the report or resolution.
- d) Reasoned votes regarding decisions that are not included in a separate draft or report are not publishable, including the submission of cases to the Inter-American Court, the approval of requests for information pursuant to Article 41 of the American Convention and Article 18 of the Statute (...), and the approval of press releases, statements on social media, and administrative matters.

While the IACHR’s historical practice had limited the publication of reasoned votes to reports on petitions and cases, the resolution extended this possibility to thematic, country and annual reports. More than three years after its adoption, it is timely to consider whether separate votes should be published in such reports.

In his dissenting opinion to Resolution 2/22, then-Commissioner Carlos Bernal Pulido welcomed the IACHR’s decision, but questioned the seventh paragraph, which allows the majority to agree on different modalities of access to the vote. He emphasized that restrictions on the individual opinions of commissioners must be subject to strict scrutiny lest they violate their freedom of expression. In this regard, DPLF considers that the restriction of reasoned votes in country and thematic reports goes beyond protecting the individual freedom of those who make up the IACHR. Other principles and interests must also be taken into account, such as the possibility that public dissent could cast doubt on the validity of the majority decision and, ultimately, the Commission’s legitimacy to fulfil its mandate of monitoring and promotion.

This document outlines the legal, political and institutional justifications for restricting the publication of dissenting opinions to decisions on petitions and cases, in line with the practices of the IACHR for almost six decades and of similar quasi-judicial bodies within the universal and African human rights systems. It also analyses the practical implications of excessive dissent and publicity, and suggests deliberative principles to strengthen consensus when adopting country and thematic reports.

1. IMPORTANCE OF REASONED VOTES AND DISSENTING OPINIONS

Reasoned votes are inherent to the mandate of a collegiate body with jurisdiction to adjudicate legal disputes.⁴ Dissenting opinions, in particular, allow for a review of the relevance of current legal rules⁵ and serve as a counter-majority mechanism for deliberation. They also promote accountability to the recipients of a court's decisions. These opinions help to prevent unreasonable and sudden changes to the legal rules applicable to a given situation, making the legal system more predictable.

With regard to the IACHR, minority opinions have often paved the way for future majority positions, stimulating dialogue between different parties and encouraging changes in the Inter-American Court of Human Rights' jurisprudence. Similarly, the reasoned opinions in IACHR pronouncements are precursors to new rules and principles forming part of Inter-American law.⁶

Specialized literature defines the individual votes of members of international dispute settlement bodies as part of the legal doctrine. Some scholars⁷ even consider these statements, made by individuals with the mandate to interpret international law, to rank hierarchically between the teachings of authoritative publicists and comparative jurisprudence, as sources of international law under Article 38 of the Statute of the International Court of Justice (ICJ).⁸

⁴ Tuset del Pino, P. (2023). El voto particular en el dictado de sentencias. *Revista Derecho y Proceso*, 4, 17-24, pp.17 a 18.

⁵ Cascajo Castro, J. L. (1986). La figura del voto particular en la jurisdicción constitucional española. *Revista Española de Derecho Constitucional*, 6(17), 171-185.

⁶ For an analysis of the importance of dissenting votes in the jurisprudence of the Inter-American Court of Human Rights, see Del Toro Huerta, M. I. (2003). Reflexiones sobre la doctrina de los jueces de la Corte Interamericana de Derechos Humanos a través de sus votos particulares. *Justicia, libertad y derechos humanos: Ensayos en homenaje a Rodolfo E. Piza Escalante*, I, 481-512. Retrieved from <https://archivos.juridicas.unam.mx/www/bjv/libros/12/5951/19.pdf>

⁷ Virally, M. (1994). Fuentes del Derecho Internacional. *Manual de Derecho Internacional Público*, p. 181.

⁸ According to Article 38(1)(d) of the ICJ Statute, "judicial decisions and the teachings of the most highly qualified publicists of various nations" are sources of international law that complement treaties and international custom.

2. REASONED VOTES IN THE INTER-AMERICAN NORMATIVE FRAMEWORK

The American Convention on Human Rights (ACHR) was drafted by a conference of states and ratified by the majority of members of the Organization of American States (OAS). The Statute of the Inter-American Commission on Human Rights (IACHR), on the other hand, was initially approved by a Conference of Foreign Ministers and then amended by the OAS General Assembly.⁹ In contrast, the IACHR's Rules of Procedure are drafted and amended by its members in accordance with Articles 39 of the ACHR¹⁰ and 22(2) of the Statute.¹¹ The latter instruments explicitly limit the Commission's mandate, policies and institutional practices, whether or not they are formalized in its Rules of Procedure.

The only statutory provision (i.e., emanating from a treaty) that refers to the publicity of the reasoned votes of the commissioners is Article 50 of the ACHR, which refers to reports on contentious cases. Its first paragraph establishes that each member of the IACHR has the power to add a separate opinion to the respective report.¹² In turn, Article 51(3) of the ACHR establishes the Commission's power not to publish the final report on the merits of a case, in the following terms: "When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and **whether to publish its report.**" (Emphasis added).

⁹ The incorporation of the IACHR into the institutional structure of the OAS did not occur until 1967, with the adoption of the Protocol of Reforms to the OAS Charter (Protocol of Buenos Aires), signed at the Third Special Inter-American Conference. This protocol amended the article of the original OAS Charter that mentioned the organs through which the organization carried out its purposes to include the IACHR. From then on, it became a principal organ, part of the structure of the organization. For more information, see Salazar, K. & Cerqueira, D. (2021, August). Autonomy and independence of the IACHR in the institutional mosaic of the OAS: some clarifications. *AportesDPLF*, 23, 40-44. Retrieved from https://back.dplf.org/sites/default/files/aportes_23_esp_0.pdf

¹⁰ Article 39. The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

¹¹ Article 22(1) The present Statute may be amended by the General Assembly. (2) The Commission shall prepare and adopt its own Regulations, in accordance with the present Statute.

¹² Article 50(1) If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

On the other hand, Article 17 is the only provision of the IACHR Statute that refers to the votes of its members. This provision is limited to defining the *quorum* for voting on collegial decisions, without any reference to the possibility of issuing separate votes.¹³

Thematic reports and reports on the human rights situation in countries are not expressly mentioned in either the ACHR or the Statute. Their preparation follows a practice that has been sustained for several decades, in compliance with the general monitoring and promotion powers provided for in Article 41 of the ACHR and Article 18 of the Statute. The scope of these provisions has been shaped by repeated institutional practices, several of which are formalized in Chapter V of the IACHR Rules of Procedure.

Although Article 19 of the IACHR Rules of Procedure is quite specific regarding the power and opportunity to issue reasoned votes, its text does not clarify whether the publication of such votes is applicable to any type of decision or whether it is limited to reports on contentious cases. Given this legal gap, it is necessary to resort to methods of interpretation that yield a normative statement from the aforementioned rule of procedure that aligns with the ACHR and the Statute regarding when reasoned votes may be published.

Using the literal, systematic, and teleological methods of interpretation, it seems that the ACHR incorporates a restrictive criterion regarding the publication of reasoned votes. As previously mentioned, the treaty limits itself to authorizing the publication of individual votes related to reports on contentious cases [Article 50(1)] without mentioning other types of reports or decisions. Conversely, the ACHR permits the confidentiality of final reports on the merits [Article 51(3)] and, consequently, the confidentiality of any reasoned votes included in them. Thus, the ACHR takes a restrictive position on the publicity of such decisions.

Under the historical method of interpretation, the practice of the IACHR over the last six decades has been precisely not to publish reasoned votes in decisions on country and thematic reports, as will be explained in detail in the next section. Under the evolutionary approach, the IACHR could modify its interpretation of the scope of Article 19 of the Rules of Procedure and incorporate a new institutional policy. Specifically, Resolution 2/22 establishes a new institutional policy, but does so abruptly, without sufficient explanation, and with the potential to undermine the effectiveness of the Commission's monitoring and promotion powers.

¹³ Article 17(1) An absolute majority of the members of the Commission shall constitute a quorum. (2) In regard to those States that are Parties to the Convention, decisions shall be taken by an absolute majority vote of the members of the Commission in those cases established by the American Convention on Human Rights and the present Statute. In other cases, an absolute majority of the members present shall be required. (3) In regard to those States that are not Parties to the Convention, decisions shall be taken by an absolute majority vote of the members of the Commission, except in matters of procedure, in which case, the decisions shall be taken by simple majority.

3. THE IACHR'S HISTORICAL PRACTICE REGARDING THE PUBLICATION OF REASONED VOTES AND COMPARATIVE EXPERIENCE

The fourth and fifth recital paragraphs of Resolution 2/22 state that “most of the separate votes of the IACHR have been adopted in reports on individual petitions and cases,” although “the institution of separate votes **has been also used, albeit on a very exceptional basis, with respect to resolutions on precautionary measures, country reports, and thematic reports.**” (Emphasis added).

By omitting the fundamental difference between the concept of a separate vote and its publicity, the underlined excerpt of Resolution 2/22 seems to suggest that the use and publicity of such votes were merely exceptional in country and thematic reports, without clarifying that the latter (publicity) is a practice that was only inaugurated on August 7, 2020, two years before the Resolution under analysis. On that date, for the first time in almost six decades, the IACHR referred to a dissenting vote in a thematic report, namely the *Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights*. Page four of the report reads: “[C]ommissioner Edgar Stuardo Ralón issued his reasoned vote against the report. This reasoned vote is available at the Executive Secretariat of the IACHR.”¹⁴

On that occasion, the IACHR merely mentioned the existence of a dissenting vote, without including it in the content of the report or making it public by other means. Since then, and until February 2026, four thematic reports have been adopted that contain concurring or dissenting votes, which were published as an annex to the respective report. This was the case with the reports *Women Deprived of Liberty in the Americas*, from March 2023; *Study on Freedom of Religion and Belief*, from September 2024; *Human Rights Situation of Persons with Disabilities in the Americas*, from January 2025; and the *Third Report on the Situation of Human Rights Defenders in the Americas*.¹⁵

¹⁴ IACHR. *Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights*. OEA/Ser.L/V/II, Doc. 239, August 7, 2020.

¹⁵ IACHR. *Study on Freedom of Religion and Belief*. OEA/Ser.L/V/II, Doc. 384/23, September 10, 2023; *Women Deprived of Liberty in the Americas*. OEA/Ser.L/V/II, Doc. 91/23, March 8, 2023; *Situation of the Human Rights of Persons with Disabilities in the Americas*. OEA/Ser.L/V/II, Doc. 1/25, January 31, 2025; and *Third Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II, Doc. 119/25, April 15, 2025. In the report *Right to Self-Determination of Indigenous and Tribal Peoples*, dated December 2021, although there was no dissenting vote, the IACHR noted the following: “At the time of the report’s approval, Commissioner Edgar Stuardo Ralón Orellana announced a reasoned written dissent, which was received by the Executive Secretariat after the expiration of the statutory deadline.” See IACHR. *Right to Self-Determination of Indigenous and Tribal Peoples*. OEA/Ser.L/V/II, Doc. 413, December 28, 2021, p. 4.

As to the publication of dissenting votes in country reports, this occurred for the first time in January 2024,¹⁶ in the report *Social Cohesion: The Challenge for the Consolidation of Democracy in Bolivia*.¹⁷ As of February 2026, dissenting votes have been published in three other reports on Honduras, El Salvador, and Guatemala, approved in March and June 2024 and November 2025, respectively.¹⁸

Contrary to what the recital paragraphs of Resolution 2/22 highlighted above seem to suggest, the publication of separate votes in thematic and country reports was not an exceptional practice, but rather non-existent, at least until August 2020. Prior to that, the IACHR limited the publication of such votes to the petition and case system, a practice that is consistent with the way other supranational bodies that combine the mandate of adjudicating contentious cases, monitoring, and promoting human rights operate. In the Universal System, for example, members of committees empowered to evaluate individual petitions or complaints may issue individual opinions, which are attached and published with the respective decision. Under the Optional Protocol to the International Covenant on Civil and Political Rights, the UN Human Rights Committee must seek to have its decisions adopted by consensus. However, Article 104 of the Committee's Rules of Procedure establishes that its members may request that their individual votes (concurring or dissenting) be attached to the Committee's rulings on petitions or complaints.¹⁹ In promotional functions that are separate from the adjudication of petitions, the treaty bodies of the Universal System do not publish reasoned votes of their members.

For example, the 40 general recommendations of the Committee on the Elimination of Discrimination Against Women,²⁰ the 37 recommendations of the Committee on the Elimination of Racial Discrimination,²¹ and the 26 observations of the Committee on Economic, Social and Cultural Rights²² do not include reasoned votes. At least in the last ten years, the annual reports²³ and substantive monitoring statements²⁴ issued by the UN Human Rights Committee do not include separate votes either. In the African System, the publication of reasoned votes for members of the African Commission on Human and Peoples' Rights is not established in its Rules of Pro-

¹⁶ In its observations on the on-site visit to Haiti, published in March 2008, the IACHR included a reasoned vote by then-Commissioner Freddy Gutiérrez. Strictly speaking, these observations are not a country report. The title and scope of the document seem to bring it closer to the IACHR's recent practice of publishing preliminary observations on the on-site visit before publishing a more comprehensive country report. In the case of the on-site visit to Haiti, carried out in April 2007, the IACHR has limited itself to publishing preliminary observations, without a country report per se. See IACHR. *Observations of the Inter-American Commission on Human Rights on Haiti in April 2007*. OEA/Ser.L/V/II.131, doc. 36, March 2, 2008. Retrieved from <https://cidh.oas.org/countryrep/haiti07sp/haiti07informesp.sp.htm>

¹⁷ IACHR. *Social Cohesion: The Challenge for the Consolidation of Democracy in Bolivia*. OEA/Ser.L/V/II, Doc.1/24, January 20, 2024.

¹⁸ IACHR. *Report on the State of Emergency and Human Rights in El Salvador*. OEA/Ser.L/V/II, Doc. 97/24, June 28, 2024; *Report on the Human Rights Situation in Honduras*. OEA/Ser.L/V/II, Doc. 9/24, March 24, 2024; and *Human Rights Situation in Guatemala*. OAS/Ser.L/V/II, Doc. 227/25, November 2, 2025.

¹⁹ See, for example, United Nations, Human Rights Committee, T.T. v. Ukraine, CCPR/C/134/D/2985/2017, January 16, 2023; CEDAW Committee, L.A. et al. v. North Macedonia, CEDAW/C/75/D/110/2016, April 12, 2020. See also the considerable number of votes cast by members of the Human Rights Committee in: United Nations, Selected Decisions of the Human Rights Committee under the Optional Protocol, CCPR/C/OP/8, 75th to 84th sessions (July 2002 - July 2005), New York and Geneva, 2007.

²⁰ All recommendations are available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=11

²¹ All recommendations are available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=11

²² All recommendations are available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=11

²³ All annual reports of the Human Rights Committee can be found at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=sp&TreatyID=8&DocTypeID=27

²⁴ All substantive statements of the Human Rights Committee can be found at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=sp&TreatyID=8&DocTypeID=68

cedure or in the African Charter. This power is only provided for judges of the African Court, whose Rule of Procedure 70 establishes that separate or dissenting opinions shall be published together with the Court's ruling.²⁵

According to the information available on the African Commission's website, there are no reasoned votes published in any of the resolutions, reports, or pronouncements issued by the twelve special thematic mechanisms of that body.²⁶ The absence of separate votes is also reflected in the African Commission's activity reports,²⁷ which are similar to the IACHR's annual report.

In conclusion, the common practice of the treaty bodies of the Universal System and the African Commission on Human Rights, whose mandate is quite similar to that of the IACHR, is to keep the individual votes of its members in pronouncements on monitoring and promotion confidential, allowing such votes to be made public only to their respective individual petition systems.

²⁵ African Court on Human and Peoples' Rights, Rules of Court, September 1, 2020, Rule 70.(2) Retrieved from <https://www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf>

²⁶ African Commission, Special Mechanisms, year of establishment, resolutions adopted, and reports. Retrieved from <https://achpr.au.int/en/special-mechanisms>

²⁷ Activity Report 47 for the period May 14 to November 10, 2019, March 18, 2020; Combined Activity Reports 48 and 49 for the period November 11, 2019, to December 3, 2020, April 21, 2021; Combined Activity Reports 50 and 51 for the period from December 4, 2020, to December 5, 2021, March 29, 2022; Combined Activity Reports 52 and 53 for the period from December 6, 2021, to November 9, 2022, June 8, 2023; Combined activity reports 54 and 55 for the period from November 10, 2022, to November 10, 2023, March 8, 2024. Retrieved from <https://achpr.au.int/en/documents/activity-reports>

4. FREEDOM OF EXPRESSION OF THE MEMBERS OF THE IACHR

In his dissenting vote on certain provisions of Resolution 2/22, then-Commissioner Carlos Bernal Pulido stated that Article 19 of the Commission's Rules of Procedure "establishes the right of commissioners to submit separate votes and, consequently, gives effect to the freedom of expression of those of us who are members of this important organization." He also suggests that paragraph 7 of the resolution could violate that individual freedom when it states that "to preserve the object and purpose of the country report, thematic report, or resolution, the IACHR may agree upon another modality, time frame, and way of accessing the respective separate vote."²⁸

Although Resolution 2/22 does not weigh the freedom of expression of the commissioners against other legally protected interests, the aforementioned dissenting vote does propose such an exercise, based on the jurisprudence of the Inter-American Court of Human Rights (IACt-HR) on strict scrutiny of restrictions on specially protected speech. The dissent provides a meticulous analysis of inter-American jurisprudence on freedom of expression, but omits rules derived from inter-American standards and other sources of international law that impose limits on the freedom of expression of those who hold certain public offices, especially those of a jurisdictional nature.

In the words of the IACt-HR: "[t]he freedom of expression of judges may be subject to different restrictions and in ways that does not affect other persons, including other public officials."²⁹ On the other hand, the Court has emphasized that:

(...) Therefore, the restriction of some specific conducts by judges in order to protect independence and impartiality in the exercise of justice is in keeping with the American Convention as a "right or freedom of others." The compatibility of such restrictions with the American Convention must be examined in each specific case, taking into account the content of the views and the circumstances. Thus, for example, opinions expressed in an academic context could be more permissible than those expressed in the media.³⁰

²⁸ Partially dissenting opinion of Commissioner Carlos Bernal Pulido, IACHR. Resolution 2/22. Reasoned Opinion, August 8, 2022.

²⁹ Inter-American Court of Human Rights. *Case of Urrutia Laubreaux v. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2020. Series C No. 409, para. 82.

³⁰ Inter-American Court of Human Rights. *Case of Urrutia Laubreaux v. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2020. Series C No. 409, para. 84.

In its jurisprudence on the potential conflict between the freedom of expression of judicial officials and the need to preserve the dignity of their functions, their independence, and impartiality, the IACt-HR has used the United Nations Basic Principles on the Independence of the Judiciary and the Bangalore Principles of Judicial Conduct, whose principle 8 and paragraph 4(6) establish, respectively, that:

[m]embers of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary (...).

and

A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but when exercising such rights, a judge shall always conduct himself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

The United Nations Special Rapporteur on the Independence of Judges and Lawyers has also referred to the freedom of expression of judges. In this regard, he has underlined that:

In some of these standards [on freedom of expression] it is expressly recognized that the exercise of this freedom carries with it special duties and responsibilities.

These special duties and responsibilities have a special significance in cases concerning the freedom of expression of judges and prosecutors. As civil servants, judges and prosecutors are bound by a “duty of loyalty, reserve, and discretion toward their employer, and are expected to “show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question.” **The duty of loyalty and discretion requires that the dissemination of even accurate information is carried out with moderation and propriety (...).**³¹ (Emphasis added).

This duty of restraint has been included in the Commentary on the Bangalore Principles of Judicial Conduct, when addressing the participation of judicial authorities in public debates. Adopted by the United Nations Office on Drugs and Crime, this commentary makes two considerations in this regard:

[T]he first is whether the judge’s involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attack or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement.³²

The possibility of restricting the freedom of expression of judicial authorities has also been addressed by the European Court of Human Rights, which has concluded that such restriction is necessary “ (...) in all cases where the authority and impartiality of the judiciary are likely to be called in question.”³³ Along the same lines, Opinion

³¹ United Nations, Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Independence of judges and lawyers, A/HRC/41/48, April 29, 2019, paras. 32–33.

³² UNODC, Commentary on the Bangalore Principles of Judicial Conduct, September 2007, para. 134. Retrieved from https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf

³³ ECHR, Case of Wille v. Liechtenstein [GS], (no. 28396/95), Judgment of October 28, 1999, para. 64, and Case of Kudeshkina v. Russia, (no. 29492/05), Judgment of February 26, 2009, para. 86.

No. 25 of the Consultative Council of European Judges of the Council of Europe, concerning the freedom of expression of judges, states:

(...) the institutional and governmental nature of the judicial office gives an ambivalent character on the freedom of expression of an individual judge. Statements of judges may have an impact on the public image of the justice system, as the public may generally perceive them not only as subjective but also as objective assessments, and ascribe them to the entire institution.³⁴

A precedent that points to the possibility of restricting the publicity of the individual opinions of commissioners in certain contexts is the *Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council*, whose Article 12 establishes the duty of mandate holders in treaty bodies and special procedures to “bear in mind the need to ensure that their personal political opinions are without prejudice to the execution of their mission (...)” and “show restraint, moderation and discretion so as not to undermine the recognition of the independent nature of their mandate or the environment necessary to properly discharge the said mandate.”³⁵

It is worth recalling situations in which the freedom of expression of members of the IACHR was invoked to justify statements that publicly questioned certain faculties and decisions of the regional human rights body. Despite this invocation, the majority of commissioners reprimanded the statements. For instance, in July 2007, the IACHR replaced Commissioner Gutiérrez Trejo in his responsibilities as thematic and country rapporteur, due to:

Commissioner Freddy Gutiérrez Trejo has made numerous public statements regarding the functions and mandates of the Commission in matters and pending cases concerning his country of nationality; has repeatedly abused his position as Rapporteur in order to attack the institutional integrity and impartiality of the IACHR and its members; and has made false statements regarding matters and pending cases before the Commission.³⁶

Although this warning was based on *ad hominem* declarations attacking the institutional integrity of the Commission, it is an example in which freedom of expression does not grant immunity to a commissioner who publicly questions the enforceability of the decisions of the collegiate body.

Finally, it is important to emphasize that the work of monitoring and promotion relies on channels of dialogue between the IACHR and representatives of the States, the General Secretariat, and the political bodies of the OAS. This work has an inevitable political dimension that makes it inadvisable to seek a solution based exclusively on the primacy of the individual freedoms of the commissioners, based on a balancing of rights.

³⁴ Council of Europe, Consultative Council of European Judges, Opinion No. 25 on the freedom of expression of judges, Strasbourg, December 2, 2022, para. 27.

³⁵ United Nations, Human Rights Council, Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council, A/HRC/5/21, June 18, 2007, chap. III, para. 62.

³⁶ IACHR. Resolution No. 03/07, July 17, 2007. Retrieved from <https://cidh.oas.org/resolution3.07.htm>

5. PRACTICAL IMPLICATIONS OF THE PUBLICATION OF INDIVIDUAL VOTES IN DECISIONS UNDER THE PILLARS OF MONITORING AND PROMOTION

Below are some practical implications of the publication of reasoned votes, particularly dissenting votes, in decisions falling within the Commission's monitoring and promotion faculties, since the adoption of Resolution 2/22.

5.1. Institutional weakening due to the incentive for dissent to the detriment of collegial positions

Some scholars have argued that excessive dissent and its publicity undermine the authority of collegial decisions, compromise their legal certainty, and reduce their social acceptance³⁷. Conversely, seeking consensus in judicial rulings reinforces their legitimacy and makes them more acceptable to the public.³⁸

A study on the dissenting opinions of members of constitutional courts, prepared by the European Commission for Democracy through Law of the Council of Europe—known as the Venice Commission—emphasizes the impact on the credibility and legitimacy of decisions on which such dissenting votes have been cast. The study highlights the pernicious effect of votes that, rather than supporting a more reasonable legal argument than that chosen by the majority, question the quality of the majority decision or the manner in which it was adopted. In this regard, the report emphasizes that:

Separate opinions [...] have the potential of weakening the court's authority, legitimacy and credibility, particularly when a given decision was adopted by a narrow majority (...).³⁹ The legitimacy (...) will only be ensured by separate opinions that remain loyal to the court and its institutional role. Separate opinions should therefore generally focus on explaining that the matter could be dealt with differently, and perhaps, in a better way, but not that the solution chosen by the majority was of poor quality.⁴⁰

³⁷ Cascajo Castro, J. L. (1986). La figura del voto particular en la jurisdicción constitucional española. *Revista Española de Derecho Constitucional*, 6(17), 171-185, p. 178.

³⁸ Rodríguez Rodríguez, A. (2023). El valor de la disidencia. *Revista de la Academia Puertorriqueña de Jurisprudencia y Legislación*, XXIII, pp. 23 y 24.

³⁹ European Commission for Democracy through Law (Venice Commission), *Report on Separate Opinions of Constitutional Courts*, Venice, December 14-15, 2018, para. 18. Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)030-e)

⁴⁰ European Commission for Democracy through Law (Venice Commission), *Report on Separate Opinions of Constitutional Courts*, Venice, December 14-15, 2018, para. 40. Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)030-e)

In the same vein, the Venice Commission report notes that:

(...) separate opinions are also associated with negative effects, such as the weakening of the court's authority, the distortion of legal certainty, as well as the excessive individualization and politicization of judicial decision-making (...).⁴¹ Their role should be to contribute to the development of the law by promoting certain alternative legal opinions (...).⁴² It is precisely because a separate opinion should be considered a *ultima ratio* solution (...) judges should primarily attempt to influence the majority opinion rather than immediately aim for a dissenting or concurring opinion.⁴³

These parameters should guide the IACHR's debate on the role of reasoned votes and their publicity, both in relation to the adjudication of contentious cases, a function that is similar to the jurisdictional work of a court, and in relation to pronouncements on promotion and monitoring. While restraint in excessive dissent is an imperative applicable to any type of collegial decision, its publication is particularly harmful in decisions related to this second category of pronouncements.

5.2. Political polarization and weakening of recommendations in country and thematic reports

The unrestricted publicity of dissenting votes can undermine the authority of decisions and recommendations approved by the majority, especially when their repeated use fosters political polarization within the collegiate body.⁴⁴ Indeed, there have been clear signs of this polarization within the IACHR for some years now. One example of this is the country report on the State of Emergency in El Salvador approved in June 2024, in which a dissenting vote questioned the report's methodology, the rigor of its sources, the selection of testimonies, the scope of its pronouncements, and the IACHR's transparency practices.⁴⁵

Although this document does not seek to delve into these specific questions, the findings and recommendations contained in the aforementioned report appear to adhere to a methodology that has been consolidated by the Commission over several decades and that is consistent with international best practices on the documentation of serious human rights violations, such as the Minnesota Protocol.

The reasoned votes published by the IACHR should encourage vigorous deliberation, not discredit the work of the body in the eyes of its users, the States, and the general public. In this vein, publicizing this type of questioning is contrary to the purpose of a reasoned opinion, as it risks undermining compliance with the recommendations addressed to the respective State, forcing the regional body to legitimize its own pronouncements.

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⁴¹ European Commission for Democracy through Law (Venice Commission), *Report on Separate Opinions of Constitutional Courts*, Venice, December 14-15, 2018, para. 18. Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)030-e)

⁴² European Commission for Democracy through Law (Venice Commission), *Report on Separate Opinions of Constitutional Courts*, Venice, December 14-15, 2018, para. 30. Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)030-e)

⁴³ European Commission for Democracy through Law (Venice Commission), *Report on Separate Opinions of Constitutional Courts*, Venice, December 14-15, 2018, para. 41. Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)030-e)

⁴⁴ Cascajo Castro, J. L. (1986). La figura del voto particular en la jurisdicción constitucional española. *Revista Española de Derecho Constitucional*, 6(17), 171-185, p. 185.

⁴⁵ Reasoned vote of Commissioner Carlos Bernal Pulido on the report *State of Emergency and Human Rights in El Salvador*, joined by Commissioner Stuardo Ralón Orellana, in: IACHR. *Report on the State of Emergency and Human Rights in El Salvador*, OAS/Ser.L/V/II, Doc. 97/24, June 28, 2024, pp. 324-335.

This reflection does not suggest that the IACHR's working methodology for monitoring and promotion is infallible. Differences in deliberations on country or thematic reports should be properly evaluated, and it is recommended that they be recorded in the minutes so that subsequent compositions can make better judgments. However, questioning the essence of the IACHR's work, such as its transparency and methodology for determining facts, should be discussed internally and not be put to a vote disseminated through the Commission's official channels.

5.3. Some deliberative premises that could strengthen the search for consensus in decisions on country and thematic reports

When one or more commissioners express reasonable disagreement with the majority opinion, the report should address the essential elements of the divergence, indicating the reasons and sources of law that support the chosen interpretation. This does not mean transferring an adversarial debate on the different positions in dispute to the text of the report. Rather, it is a matter of including a clear legal basis for a particular State obligation that, in the opinion of one or more commissioners, is not enforceable in light of current inter-American standards.

If possible, the IACHR should prioritize the processing of petitions or cases whose controversy revolves around legal issues related to those that caused disagreement during the deliberation of a thematic or country report. This would enable dissenters to publicly explain the basis for their position during the deliberation of an approved country or thematic report. This recommendation is based on the understanding that the publication of individual votes in reports on contentious cases is expressly enshrined in Article 50(1) of the ACHR, a faculty that is not reflected in any conventional, statutory, or regulatory provision relating to country or thematic reports.

Second, the repeated divergence on the methodology used in these reports should give rise to an internal discussion on the institutional policies of the IACHR. If necessary, this body could make its institutional policies and practices more transparent or even improve them, for example, in a section of Chapter III of its Annual Report on the activities of the thematic and country rapporteurships. This practice would safeguard the possibility that duly substantiated disagreements by one or more commissioners be aired in general terms and not as a mechanism to discredit the majority position in a specific report.

Finally, since this institutional policy change is comparable to a regulatory amendment whose compatibility with the ACHR itself could be questioned, Resolution 2/22 should have been preceded by a process of dialogue with the users of the Inter-American Human Rights System (IAHR).

CONCLUSIONS

Reasoned votes are inherent to the judicial or quasi-judicial function of a collegiate body, allowing differences in legal criteria among its members to be aired, contributing to the development of case law, and serving as a mechanism of accountability both for those who adhere to the majority position and for those who raise dissenting opinions.

While the ACHR expressly refers to reasoned votes and their publication in relation to the petition and case system, neither this treaty nor the Statute or Rules of Procedure of the IACHR specify whether this possibility also applies to decisions on monitoring and promotion, such as country and thematic reports. Resolution 2/22 expressly extends the publication of reasoned votes to such reports.

One of the reasons expressed by a member of the IACHR when this resolution was adopted was the need to regulate the exercise of freedom of expression by commissioners. Although this is an important element in the discussion, the freedom of expression of commissioners must be weighed against other principles and values at stake. In fact, the IACHR's nearly 60 years of practice and the current practice of other supranational bodies with a similar mandate show that the publication of reasoned votes is limited to the petition and case system and to resolutions on precautionary, provisional, or interim measures.

The excessive use of reasoned votes and their publication in country and thematic reports could have negative consequences, such as the politicization of decisions on monitoring and promotion and the deterioration of diplomatic dialogue with OAS member states. In order to strengthen consensus in the adoption of these reports, the IACHR should incorporate some minimum deliberative premises, focused on internal accountability regarding the legal basis of concurring and dissenting positions. Finally, the IACHR should engage in dialogue with users of the inter-American system prior to making significant changes to its institutional policies and practices regarding monitoring and promotion.



The **Due Process of Law Foundation** (DPLF) is a regional organization comprised of professionals from various nationalities, whose mandate is to promote the rule of law and human rights in Latin America through analysis and proposals, cooperation with public and private organizations and institutions, the exchange of experiences, and advocacy activities.

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