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## INVESTIGACIÓN


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### WOMEN'S POLITICAL RIGHTS IN A DEMOCRATIC SOCIETY

*Derechos políticos de las mujeres en una sociedad democrática*

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#### ABSTRACT

This paper addresses, through a timeline, women's political rights in a democratic society. For the realization of this study, an analysis of the struggle of women for their human rights throughout history was conducted, beginning with the postulates of Olympe de Gouges as the starting point of feminism in the world and the fight for women's human rights.

**KEY WORDS:** Democracy - Human Rights - Political Rights, Women.

#### RESUMEN

El presente trabajo aborda a través de la línea del tiempo de los derechos políticos de las mujeres en una sociedad democrática, para la realización del estudio, se hace un análisis de la lucha de las mujeres por sus derechos humanos a través de la historia, dando inicio con los postulados de Olympe de Gouges como punto de partida del feminismo en el mundo y la lucha por los derechos humanos de las mujeres.

**PALABRAS CLAVE:** Democracia - Derechos Humanos -Derechos Políticos, Mujeres.

### DIREITOS POLÍTICOS DAS MULHERES EM UMA SOCIEDADE DEMOCRÁTICA

#### RESUMO

O presente trabalho aborda através de uma linha de tempo os direitos políticos das mulheres em uma sociedade democrática, para a realização do estudo, se faz uma análise da luta das mulheres pelos seus direitos humanos através da história,

iniciando com os postulados de Olympe de Gouges como ponto de partida do feminismo no mundo e a luta pelos direitos humanos das mulheres.

**PALAVRAS CHAVE:** Democracia - Direitos Humanos -Direitos Políticos, Mulheres.

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## 1. INTRODUCTION

Democracy is a word that bears a broad meaning, being its values, honesty, solidarity, responsibility, pluralism, freedom, social justice, tolerance and equality. But, as pointed out by Alexis de Tocqueville (2015) in his work “Democracy in America”, paraphrasing Plato, because if we want to change the ethical life of men “the main and most urgent problem is to find the true political order, finding it, we can proceed to the training of the good man who will, at the same time, contribute to the formation of the Just State”, this alludes to that political order that must prevail in any democracy and to the just men in a state under the rule of law.

Democracy, as a form of government created by men, has been the best one throughout history since its genesis in ancient Greece in the 6th century Before Christ, and for their part, many thinkers have carried these ideals of true democracy, such as Abraham Lincoln who expressed the essence of the Greek words, of the sense of democracy, the government of the people, by the people and for the people.

It was precisely in those assemblies of the people in Greece that citizens were free to vote in the creation of laws, with the exception of slaves and women. And to that form of political government that defends the sovereignty of the people and the right of the people to choose and control their rulers, human rights are linked. In the late modern period and with the evolution of the law and the internationalization of the procedural law of human rights, democracy has been strengthened in the world.

## 2. OBJECTIVES

The main objective of this research work was to analyze the advancement the Corpus Juris of the rights of women has had, proceeding to the study of the judgments of the Inter-American Court of Human Rights and the postulates they describe in their judgments about the importance and safeguard of the political rights in the democracy of the Americas.

### 3. METHODOLOGY

This work addresses the study of the political rights of women in a democratic society. To this end, comparative studies of the right of women to vote and be elected were carried out from a qualitative approach, through analytical, historical and synthesis methods.

### 4. DISCUSSION

#### 4.1. Democracy and the Inter-American System

As a result of the evolution of human rights, the Inter-American Democratic Charter was born. It was adopted on September 11, 2001, by a special session of the General Assembly of the Organization of American States, and embodies the existence, in the Inter-American System, of the relation between human rights, representative democracy and the political rights, in particular, describing in Article 3 of the Democratic Charter (OAS, 2011): The objective of the democratic charter is: to achieve stability, peace, and development of the region, being one of the purposes of the Organization of American States to promote and consolidate representative democracy, with due respect for the principle of nonintervention; but that also recognizes the contributions of the OAS and other regional and sub-regional mechanisms to the promotion and consolidation of democracy in the Americas.

This reaffirms that the participation of democracy in the different fields of public activity in our countries contributes to the consolidation of democratic values, such as freedom, solidarity, equality, legality, social justice, pluralism and responsibility.

In the case of the Inter-American System, the nations that are part of it are obliged to promote and defend it so that those who are being governed can have the freedom of permanent participation under the principle of legality, bearing in mind that in a democratic system the development of social, economic and political aspects is enhanced, in addition to the strengthening of political parties and independent candidacies, under the supervision of transparency and accountability.

In this same context, the Inter-American Court of Human Rights has pointed out in the case of *Yatama v. Nicaragua* that “in a democratic society, the rights and freedoms inherent in the human person, the guarantee applicable to them and the rule of law form a triad”, in which each component therefore defines itself, complements and depends on the others for its meaning. By pondering the importance of political rights, the Court notes that even the Convention, in its Article 27, prohibits their suspension and the suspension of the judicial guarantees which are essential for the protection of such rights.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of

Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

#### **4.2. The Political Rights of Women**

In this research, when we talk about the rights of women, we must not forget and recognize the legacy of Olympe de Gouges, a forgotten revolutionary, a woman who was actively involved in the fight for equality, even during times when women had practically no rights to participation. She proposed social reform programs for the first three legislatures of the Revolution; her work acquired a feminist and revolutionary dimension. She defended equality between men and women in all areas of public and private life, including the right to vote, access to public work and to political life, the right to possess and control property, to education, etc.

In 1791 she wrote the Declaration of Rights of Woman and of the Female Citizen, basing on the Declaration of the Rights of Man and of the Citizen, which she presented to the Parliament. However, in 1793, she was executed by guillotine. For a long time she remained forgotten, and it was at the end of the Second World War that Olympe de Gouges was considered as one of the great humanistic figures of France: one of her phrases, "woman has the right to mount the scaffold; she must equally have the right to mount the rostrum."

Man, are you capable of being just? It is a woman who poses the question; you will not deprive her of that right at least.

Tell me, what gives you sovereign empire to oppress my sex? Your strength? Your talents? Observe the Creator in his wisdom; survey in all her grandeur that nature with whom you seem to want to be in harmony, and give me, if you dare, an example of this tyrannical empire.

In this part of the preamble to the Declaration of Rights of Women and of the Female Citizen, Olympe de Gouges states that women have inalienable natural rights and asks men who has given them this tyrannical power, considering this starting point as the discrimination between both sexes.

If we look back over, since the Virginia Declaration of Rights in 1776 indicating the search for happiness of man, the Article 1 of the Declaration of the Rights of Man and of the Citizen of 1789 establishes: men are born and remain free and equal in rights, so it is noted that this document was meant for men and a specific social class, such as the bourgeoisie. In the case of the Declaration of the Rights of Woman and of the Female Citizen, it is the beginning of the timeline of the defense of the rights of women. In our case, we do not take a stance attacking men because we believe that everything has its balance and if equality is sought, respect must prevail in principle, especially since we are born of man, we have a father, brothers, sons, nephews,

friends who are men, etc. This is not a gender fight; it is the search for equality in all areas of public and private life.

Section 1- That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety (Virginia Declaration of Rights, 1776).

Article 1- Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good (Declaration of Rights of Man and of the Citizen, 1789).

It is precisely in this journey of the struggle of women throughout history that great events have occurred, such as the attainment of the right of being able to vote and be elected. In the evolution of modern societies, we can affirm that important progresses have been made on the recognition and enjoyment of the human rights of women.

In the timeline of the fight of women for their right to vote, the pages of history show that the first colony to recognize the universal female right to suffrage occurred in New Zealand in 1893, (Socio Cultural Journal, *Los ojos de Hipatia*, <https://losojosdehipatia.com.es/>), followed by South Australia in 1894. The first country that recognized the right to run for public office and suffrage was Finland in 1906; the first Finnish women were elected to occupy the parliament of 1907.

Later, by 1910, with the effervescence experienced due to the Mexican revolution, there was great participation of women, such as the Adelitas, another group of women who have faded into oblivion, but we must also acknowledge that history brings them to life. Additionally, a group of suffragettes who were called "*Las hijas de Cuauhtémoc*" [EN: The daughters of Cuauhtémoc] (*La Silla Rota* <https://lasillarota.com/lacaderadeeva/las-hijas-de-cuauhtemoc-el-movimiento-feminista-de-la-revolucion-aniversario/337208>), supported Francisco I. Madero in his fight against reelection and protested for female participation in the political life of the country; this was the reason why in 1916 the First Feminist Congress was held, which approved the citizen vote of women; however, it was omitted from the constitution of 1917. But in that year, in the State of Yucatan, citizenship to vote was granted to women over 21 years of age, and in 1923, Elvia Carrillo Puerto was elected as the first deputy to the Local Congress for the 5th District of Yucatan. And on that path of history, women spent many lustrums struggling, and at a rally on April 6, 1952, there were over 20,000 women at the "*parque 18 de Marzo*" of Mexico City who demanded their right to vote. It was in 1953, by a presidential decree that Adolfo Ruiz Cortines promulgated the reform of articles 34 and 115-section I, of the Political Constitution of the United Mexican States, that way, on July 3, 1955, women cast their votes to elect federal deputies for the first time.

Article 34- Mexican citizens shall be those individuals who are considered as Mexicans and fulfill the following conditions:

1. - To be at least 18 years old if married, or 21 if not, and

11. - To have an honest way of life (*Diario Oficial de la Federación.*, October 7, 1953).

Still, the 1948 American Declaration of the Rights and Duties of Man establishes:

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

In the advancement for the recognition and enjoyment of human rights, the Universal Declaration of Human Rights no longer establishes “man” but “all the human beings”, it is even the first document to include the words “human rights”; this opens the door to consider that women are human beings.

Article 1- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Throughout history, it has been proven how women have been segregated, sullied, and outraged. Recalling the passage of the book “*La Suerte de la Consorte*” by Sara Sefchovich, by which she narrates the lives of the wives of the Presidents of Mexico, those who only had the right to take care of their children and to make chocolates. In this work, Sara describes the case of Laura Mantecón de González in 1884, a woman who was alone and with no resources, sick and tired of the outrages and humiliations at the hands of her husband; she dared to fight against the power of Manuel del Refugio González Flores, president of the United Mexican States. He, using his powers, amended the Civil Code to deprive her of all their properties and their children: “The spouse who provides causes for divorce shall lose all his/her powers and rights over the person and properties of his/her children, and shall lose everything that was given or promised by his/her consort.”

These have been the ups and downs for women in Mexico. The judgments of the Inter-American Court of Human Rights have led to the execution of important reforms in the field of human rights in Mexico, such as the one of June 19, 2011, which shook the legal system in our country. Constitutionally, it went from the recognition to the enjoyment of human rights, and to that extend, article 1, second paragraph establishes: The provisions relating to human rights shall be interpreted according to this Constitution and the international treaties on the subject, working in favor of the broader protection of people at all times.

This paragraph highlights the interpretation according to the constitution and the international treaties about rights; in addition, it establishes the pro-homine principle, which means that a person will always be granted with what benefits

her/him the most, also, in the constitutional scope and the diffuse control of conventionality, following this same idea, it establishes in its third paragraph that:

All authorities, in their areas of competence, are obliged to promote, respect, protect and guarantee Human Rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a consequence, the State must prevent, investigate, penalize and rectify violations to Human Rights, according to the law.

This provision describes the obligation with which all authorities must comply to promote, respect, protect and guarantee human rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness, that is, all human rights for all humans. Human rights cannot be divided and depend on each other, but additionally, they will always be progressively protected, safeguarding each one of them to avoid re-victimization or the repetition of violations to human rights.

Despite the fact that our Political Constitution of the United Mexican States established that man and woman are equal under the law, gender parity was achieved on June 6, 2019, along with the reform to Articles 2, 4, 41, 52, 53, 56, 94 and 115 of the Political Constitution of the United Mexican States on gender parity, which was published in the Official Gazette of the Federation. With this, women attained the balanced participation of men and women in the positions of power and for the decision-making in all the spheres of life (political, economic and social ones). This is a remarkable condition for equality between genders, so the level of parity in political and economic institutions is currently considered as an indicator of the democratic quality of countries, integrating this datum into numerous international indexes.

Considering that the balance between men and women requires that the construction of society be better reflected, that the interests of women in the elaboration of public policies are guaranteed, and that the perception that politics is a man's job be eliminated, articles 35 and 41 establish:

Article 35- Rights of citizens: II. To be elected under parity conditions for all popular election positions, having met all the requirements set by the law. The right to request registration of candidates before the electoral authority corresponds to the political parties, as well as citizens requesting independent registration and who meet the requirements, conditions and terms set by the law.

Article 41- The law shall determine the corresponding forms and modalities to observe the gender parity principle in the designations of the people head of the Secretariats of the Executive Federal Power and its equivalents in the federated states. This same principle shall be observed in the integration of the autonomous entities (DOF. 06/06/2019).

With this reform, those glass ceilings that have served as a retaining wall, limiting the access of women to substantive equality, have fallen. This bridges the gap and equal opportunities for women and men flourish. In a democratic regime like Mexico, there is a body of law that enables the participation of all the people in the decision-making and the access to the opportunities in public and private administration. In this advancement of the fight for the rights of women, there is also a large *Corpus Juris* on women's rights, which allows guaranteeing their participation in politics and any other field.

As aforementioned, the internationalization of the constitutional law and procedural law of human rights has strengthened democracy in the Americas. As for political rights, the Inter-American Court of Human Rights has spoken of the Pact, specifically of the effectiveness of Article 23 of the American Convention on Human Rights, about the role of political rights in a democratic society, the content and importance of political rights, the obligation of the State to promote, respect and guarantee them at their utmost expression under equal conditions. Regarding the content of Article 23 of the American Convention on Human Rights, the Inter-American Court has spoken of political rights in the following cases:

**1) Case of Yatama v. Nicaragua. June 23, 2005**

The case of Yatama was one of the first cases by which the Inter-American Court of Human Rights acknowledges political rights:

191. The Court has established that "in a democratic society, the rights and freedoms inherent in the human person, the guarantee applicable to them and the Rule of Law form a triad," in which each component defines itself, complements and depends on the others for its meaning. When deliberating on the importance of political rights, the Court observes that the Convention itself, in its Article 27, prohibits their suspension as well as that of the judicial guarantees essential for their protection.

192. This Court has stated that "representative democracy is the determining factor throughout the system of which the Convention is a part," and "a 'principle' reaffirmed by the American States in the OAS Charter, the basic instrument of the inter-American system." The political rights protected in the American Convention, as well as in many international instruments, promote the strengthening of democracy and political pluralism.

**2) Castañeda Gutman v. Mexico. Judgment of August 6, 2008**

140. Political rights are human rights of fundamental importance within the Inter-American system and they are closely related to other rights embodied in the American Convention, such as freedom of expression, and freedom of association and assembly; together, they make democracy possible. The Court underscores the importance of political rights and recalls that Article 27 of the American Convention prohibits their suspension and establishes the judicial guarantees essential for their protection.



141. The political rights embodied in the American Convention, as well as in diverse international instruments, promote the strengthening of democracy and political pluralism. The Court has stated that “representative democracy is a determinant factor of the entire system of which the Convention forms part,” and constitutes “a ‘principle’ reaffirmed by the American States in the OAS Charter, a basic instrument of the Inter-American system”.

144. Article 23.1 of the Convention establishes that every citizen shall enjoy the following rights and opportunities, which must be guaranteed by the State in conditions of equality: (i) to take part in the conduct of public affairs, directly or through freely chosen representatives; (ii) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters, and (iii) to have access to the public service of his country.

194. Article 23 of the Convention embody the rights to take part in the conduct of public affairs, to vote, to be elected, and to access public functions, which must be guaranteed by the State in conditions of equality.

### **3) Case of López Mendoza v. Venezuela. September 1, 2011**

196. Political participation may include broad-ranging and varied activities that can be executed individually or in an organized manner, in order to intervene in the designation of those who will govern a State or who will be responsible for managing public affairs, as well as influencing the elaboration of State policy through direct participation mechanisms.

197. The exercise of the rights to be elected and to vote, which are closely related to each other, is the expression of the individual and social dimension of political participation.

198. Citizens have the right to take part in the management of public affairs through freely elected representatives. The right to vote is an essential element for the existence of democracy and one of the ways in which citizens exercise the right to political participation.

In the aforementioned cases, the Inter-American Court of Human Rights has based on Article 23 of the American Convention on Human Rights to speak of political rights:

1. Every citizen shall enjoy the following rights and opportunities:
  - a) to take part in the conduct of public affairs, directly or through freely chosen representative;
  - b) To vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

c) To have access, under general conditions of equality, to the public service of her/his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Even the Inter-American Court of Human Rights considered that this Article was developed in Article 2 of the Inter-American Democratic Charter of 2001: "Representative democracy is strengthened and deepened by permanent, ethical and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order."

As we have previously emphasized, the evolution of law and human rights has strengthened the political participation of people all over the Americas. As for the political rights of women, throughout time, the inequality gap of opportunities has been narrowed; even the Inter-American Court itself has considered it that way.

**4) Case of López Lone ET AL. Vs. Honduras. October 5, 2015**

149. As a starting point, it is worth emphasizing that representative democracy is one of the pillars of the system that the Convention forms part of, and constitutes a principle reaffirmed by the States of the Americas in the OAS Charter, a basic instrument of the inter-American system. Thus, the OAS Charter, a constituent treaty of the organization to which Honduras has been a party since February 7, 1950, establishes as one of its essential purposes, "to promote and consolidate representative democracy, with due respect for the principle of non-intervention.

**5) Case of San Miguel Sosa ET AL. Vs. Venezuela. February 8, 2018**

110. Article 1.1 of the Convention is a general rule, whose content extends to all the provisions of the treaty, since it establishes the obligation of the Member States to respect and guarantee the full and free exercise of the rights and freedoms recognized in it "without any discrimination". That is, whatever the origin or form it adopts, any treatment deemed discriminatory regarding the exercise of any of the rights guaranteed in the Convention is incompatible with it.

111. Article 23 of the American Convention contains many norms that allude to the rights of the person as holder of the decision-making process in public affairs, as a voter through secret ballot or as a public servant, that is, to be popularly elected or by designation or appointment to hold a public position.

Under this provision, people also have "the right to actively take part in the conduct of public affairs, directly, through referendums, plebiscites or consultations, or through freely chosen representatives". Unlike almost all the other rights

embodied in the Convention that are recognized to every person, Article 23 of such Convention not only establishes that their holders enjoy rights, but also incorporates the term “opportunities”, which implies the obligation of the State to guarantee, with positive measures by creating optimal conditions and mechanisms, that every person who formally holds these rights has the real opportunity to exercise them, effectively, with due respect for the principles of equality and non-discrimination. In this sense, the existence of institutions and procedural mechanisms that allow and ensure the effective exercise of the right is necessary, preventing or curbing legal or *de facto* situations or practices that involve forms of stigmatization, discrimination or retaliation against those who exercise it.

In the judgment of the case of Yatama versus Nicaragua of June 23, 2005, in paragraph 194, describes that Article 23 of the American Convention of Human Rights must be interpreted in connection with the right of equality that is established in Article 24 of the same Convention, and in Article 7 that states that human rights are indivisible and interdependent. The Inter-American Court has considered that the notion of equality emanates from the very nature of human kind. Considering also that the principle of equality concerns the *ius cogens*, thus protecting collective rights.

For its part, the Supreme Court of Justice of the Nation made a statement pointing out that discussions about the fundamental rights to equality and non-discrimination usually revolve around three axes:

1. The need to adopt reasonable adjustments to achieve substantive and not merely formal equality between people.
2. The adoption of special or affirmative measures, normally called affirmative actions.
3. Analysis of normative acts and precepts that directly or indirectly, by result or tacitly, are discriminatory (Thesis 44/2018) 10<sup>a</sup>.

We have pointed out how law and human rights, including political rights of women, have evolved in democratic systems, and it would be worth asking why democratic regimes sometimes become dictatorships. To this end, Steven Levitsky and Daniel Ziblatt point out in their book “How democracies die”, that despite the fact that rulers come to government in a democratic way, that is, people grant them sovereignty, they then get drunk with power and become tyrants; this is how democracies die.

In the work of Noam Chomsky, “Who Rules the World?”, he mentions that in the case of The United States, studies have demonstrated that the vast majority of its population who are at the lower end of the income-wealth index, are in fact excluded from the political system, and their opinions and stances are ignored by their formal representatives, while a small segment at the top has an overwhelming influence. For both cases he interpreted that, in the end and despite the evolution of the law aimed at guaranteeing human rights, including the political ones, there will always be the

powerful ones, those who limit the participation of the poor and kill democracy. How much has changed since those postulates of Ancient Greece.

## 6. CONCLUSIONS

Throughout this study we have noted the development of human rights, the political rights of women in a democratic society, and the strengthening of the body of laws to guarantee human rights under equal conditions for the participation in the decision-making processes. Plato, in his work "The Republic", mentions that a ruler who fails to include women in his cabinet is a headed but armless man. Since then, Plato envisioned women in the ruling cabinets; however, throughout the pages of history in the search for the rights of women, getting to the point of participating in the decision-making has not been easy, even under a democratic State. Nevertheless, the progress of human rights, the judgments of the Inter-American Court of Human Rights, the decisions and theses of the Supreme Court of Justice of the Mexican Nation, have been a guarantee for women to attain human and political rights under equal conditions.

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