

**FINAL REPORT OF THE INDEPENDENT PANEL FOR THE ELECTION OF
INTER-AMERICAN COMMISSIONERS AND JUDGES**

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Introduction

The American Convention on Human Rights and other relevant instruments have established an Inter-American Commission and an Inter-American Court to supervise the States' obligations in the area of international human rights. Since they are bodies intended to supervise States' compliance with treaty obligations, it is clear that they should be composed of the most suitable individuals. Commissioners must have high moral character and have recognized competence in human rights. In their turn, aside from those requirements judges must be jurists "who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates".

Although human rights bearers are persons, the Convention has created a public order and the rights do not only protect individual interests but the community as a whole. Consequently, it is the whole community that should be involved in the composition of the bodies that will be the custodians of faithful compliance with the Inter-American Human Rights System (IAHRS).

The upcoming elections for commissioners and judges of the will be key in advancing the mandate of the IAHRS to protect human rights throughout the Americas. It is very important that these elections be, and be seen to be, visible, transparent and legitimate exercises in finding and choosing the best candidates for the available positions.

For this reason, the Open Society Justice Initiative convened an Independent Panel for the Election of Inter-American Commissioners and Judges (Panel), with the support of a wide range of NGOs, universities, and legal clinics throughout the region.¹ Established as an independent entity, the Panel is composed of five persons with long experience and knowledge of human rights and of the Inter-American Human Rights System.²

The purpose of the Independent Panel is to improve the visibility, transparency, consistency, and legitimacy of elections to the Commission and Court. In this, we are inspired by the efforts of other international institutions to implement similar procedures. The International Criminal Court (ICC) now has an Advisory Committee on Nominations, which grew out of an NGO initiative. The European Court of Human Rights has an Advisory Panel of Experts on Candidates for Election as Judge.

¹ See Annex IV for a full list of endorsing organizations. These organizations have diverse opinions about the individual candidates and the selection process that may differ from the Panel's assessments. Their support of the initiative is rooted in a commitment to strengthening the Inter-American human rights system through the principle of fair and transparent elections.

² See Annex III for Panel member biographies.

These experiences are discussed in more detail below. We hope that our work can serve as a first step towards creating a similar procedure for the IAHRs.

This report has two parts: (1) an evaluation of the current 11 candidates for the Court and the Commission; and (2) a series of recommendations and considerations for, in the future, creating a more transparent and inclusive system for the selection and nomination of candidates, at both the national level and before the Organization of American States (OAS).

Criteria for evaluation of candidates

The American Convention on Human Rights (ACHR) and the Statute of the Court set out the minimum qualifications for judges.

They must be “jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.” In addition, “[T]he position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes” (Art. 71 ACHR). The Statute adds that the position of judge of the Inter-American Court of Human Rights is incompatible with the following positions and activities: ... Any others that might prevent the judges from discharging their duties, or that might affect their independence or impartiality, or the dignity and prestige of the office.” In addition, Article 16 of the Statute establishes that ... “The judges shall remain at the disposal of the Court, and shall travel to the seat of the Court or to the place where the Court is holding its sessions as often and for as long a time as may be necessary, as established in the Regulations.”

In addition to these statutory criteria, we considered a number of other criteria that have been used in the evaluation of judges in other courts and tribunals. The 2002 Bangalore Principles of Judicial Conduct set out a number of principles that are relevant: independence, impartiality, integrity, propriety, equality, competence and diligence.³ The definition of independence includes both individual and institutional aspects. Independence and impartiality include not only avoiding actual bias or control by other organs, but also avoiding the appearance of impropriety or lack of independence. We considered public information about the candidates with this in mind.

In terms of competence, we concluded that knowledge of and experience with human rights generally and with the Inter-American System in particular were key. In considering diligence, we looked at the ability of the candidate to carry out his or

³ Bangalore Principles of Judicial Conduct, available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

her responsibilities given other duties and commitments, as well as his or her record of professional achievement. In addition, we considered auxiliary qualities that would facilitate the Court's work, including the ability to work as part of a collegial body; ability to work in more than one of the Court's official languages; knowledge of the various legal systems that exist in the region; and a broad exposure to and understanding of the political, social and cultural environment of the region.

In the case of the Commission, the ACHR and the Statute of the Inter-American Commission on Human Rights set out the minimum qualifications for members of the Commission. Article 34 of the Convention and Article 2 (1) of the Statute state that the members "shall be persons of high moral character and recognized competence in the field of human rights." In addition, Article 8 (1) provides that "Membership on the Inter-American Commission on Human Rights is incompatible with any other activity that might affect the independence or impartiality of the member or the dignity or prestige of his post on the Commission."

Further, Article 9 sets out the duties of the members of the Commission in regard to their attendance and service as follows:

- (1) Except when justifiably prevented, to attend the regular and special meetings the Commission holds at its permanent headquarters or in any other place to which it may have decided to move temporarily.
- (2) To serve, except when justifiably prevented, on the special committees, which the Commission may form to conduct on-site observations, or to perform any other duties within their ambit.

These requirements are admittedly very general. We considered that part of the job of a commissioner is quasi-judicial, and therefore the Bangalore Principles outlined above are relevant to the Inter-American Commission as well.

In addition, we looked to the requirements and preferences for the most analogous positions in other human rights bodies. For example, the U.N. Treaty Body system created the "Guidelines on the independence and impartiality of members of the human rights treaty bodies" (the Addis Ababa Guidelines) to apply to the independent experts who staff those bodies.⁴ Those Guidelines stress the

⁴ The chairs of the United Nations treaty bodies, following consultation with their respective Committees, discussed and endorsed the Guidelines on the independence and impartiality of treaty body members at their twenty-fourth meeting in 2012. The Guidelines have been strongly recommended for prompt adoption by the respective treaty bodies, *inter alia* through inclusion, in an appropriate manner, in their rules of procedure.

independence and impartiality of members of those bodies, “treaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so.” Moreover they may not be subject to direction or influence of any kind, or to pressure from the State of their nationality or any other State or its agencies, and they shall neither seek nor accept instructions from anyone concerning the performance of their duties.

In terms of competence and suitability, we concluded that knowledge of and experience with the Inter-American human rights instruments and with the Inter-American System, in general, as well as the candidate’s record of professional achievement and advocacy were key criteria. In respect of diligence, we considered the ability of the candidate to carry out her or his responsibilities given other duties and commitments.

In addition, we took into account auxiliary qualities that would facilitate the Commission’s work, including the: ability to work as part of a collegial body; ability to work in more than one of the Court’s official languages; knowledge of the various legal systems that exist in the region; and a broad exposure to and understanding of the political, social and cultural environment of the region and of its sub-regions. Finally, we considered whether the candidate would contribute to a balance on the Commission in terms of area of expertise, gender, and other forms of diversity.

Methodology

The Panel’s assessment is based on the requirements of the respective Statutes and the foregoing criteria.

In reaching its conclusions, the Panel considered the written materials submitted by the candidates in the form of Curriculum Vitae, biographical summaries, and personal data. Where available, we looked at judicial decisions, academic papers, panel presentations, candidate blog posts and other public information. We also developed and sent a questionnaire, customized for the Court and the Commission, to elicit information about the legal and additional requirements outlined above.⁵

We decided not to use press reports or other second-hand information because of lack of time, mandate and resources to verify any such information. While we received suggestions from civil society groups in region about our recommendations for the future, we did not receive information on specific candidates, for similar reasons.

All conclusions and decisions of the Panel have been reached by consensus.

⁵ See Annexes I and II for a copy of the questionnaires that were sent to candidates for the Inter-American Commission (Annex I) and for the Inter-American Court (Annex II).

PART 1: Candidate Assessments
Inter-American Commission on Human Rights

Esmeralda Arosemena de Troitiño (Panama)

The candidate was nominated by the State of Panama

The candidate is a judge with extensive experience in her country's judiciary, with academic experience in the field of law, and with international contacts with peers in academia and the judiciary, especially in relation to female judges in several countries in Latin American.

1. High moral character

A review of public references from Judge Arosemena de Troitiño reveals that she enjoys professional prestige and legitimacy as a spokeswoman for the rights of specific groups in her country, such as children and women. Nothing was found in the public record to indicate any sanctions, warnings, unethical behavior or other professional impropriety.

2. Recognized competence in human rights

With her votes in several judicial decisions, the candidate shows interest and knowledge of international human rights norms, with a perspective that focuses on the rights of children and gender. Special consideration must be given to her votes in cases concerning domestic violence, sexual orientation, reproductive rights and, on children's rights, to a life free of violence of all kinds. Also noteworthy is her critical position on passive attitudes of investigators and prosecutors in relation to crimes that occur in the context of family and private relationships. In such rulings the candidate makes reference to Panama's international obligations as established by the treaties to which it is party, citing such norms correctly although without elaborating doctrine nor referencing precedent from international bodies themselves. Among the cited treaties, several are found from the IAHRs.

3. Independence and impartiality

Panamanian public opinion appears to link the candidate to the political sector that designated her as a judge some years ago, under the presidency of Martín Torrijos. Judge Arosemena de Troitiño has recently issued public statements in favor of the impeachment of former President Martinelli to face corruption charges. It is difficult to ascertain whether these postures correspond to partisan views or whether they are interventions in public discussion of matters of high social interest, within the competence of a former judge. Although there have been accusations of partisanship against her, her integrity and impartiality have also been recognized by people who identify themselves as opponents of the political party of Martín Torrijos.

4. Evaluation of the challenges facing the Inter-American Human Rights system

In response to our question about challenges confronting the Inter-American Human Rights System and how they would affect her work as a Commissioner, the candidate wrote:

"The major challenges facing the IAHRs are fully identified by the Commission itself and by various international organizations specially dedicated to the protection of human rights, including CEJIL and DPLF, which are in a constant process of reflection and analysis about the role and responsibilities of the Commission and the Court as key agencies in the IAHRs, and that I share as a citizen of the continent.

In organizational aspects: the budgetary, financial and essential resources situation that exists to cope with the volume of demands to meet with answers on reasonable terms, given the reality of important existing procedural delays. In regards to the creation of opportunities and strengths in promoting a dynamic process of universalization that guarantees the integration of all (35) countries of the continent, the ratification of the American Convention and recognition of the jurisdiction of the [Inter-American Court] would certainly consolidate and strengthen the system, for the effective implementation of human rights on the continent.

On the technical side: to strengthen the role and promotion of the effectiveness of the rights, which the Commission should assume through sincere, open and respectful dialogue, hearings, visits, reports, coordination with academia and civil society, technical assistance and consultancies, for knowing and addressing the main problems that the countries of the region face.

Effectiveness in the implementation of resolutions or decisions issued by the Commission with an effective monitoring and evaluation mechanism, using periodic country reports, the work of the rapporteurships and the various working groups according to different issues, with proposals for awards, acknowledgments and honorary distinctions as a positive partner and for strategic support."

5. Other considerations

The candidate speaks Spanish and has some knowledge of English. She has given lectures in several countries throughout Latin America.

She notes that she will continue to serve in academia and in the public space. Her academic work and participation in public spaces would not be incompatible with her responsibilities as a Commissioner.

6. Conclusions

In the response to our questionnaire on the challenges the IAHR faces (transcribed above), the candidate identifies the need to promote the effective implementation of the decisions of the organs of the System, the need to provide the protection bodies with appropriate resources for their important role, the universal ratification of its instruments, and the need for a more open dialogue between the States and the Commission. Such responses indicate Judge Arosemena de Troitiño is amongst those willing to drive a real strengthening of the system. However, from these responses it appears that the candidate is not particularly familiar with the contentious issues discussed in 2013 and 2014 on the so-called "strengthening" of the system (precautionary measures, Chapter IV of the Commission's report, distribution of financial contributions, status of the thematic rapporteurships, etc.).

The candidate would bring not only geographical and gender balance to the System, but also expertise on issues of children and a gender perspective, both important aspects of the present and future work of the Inter-American Commission. Her legal training should ensure a thorough study of the procedural aspects and merits of the cases that come to the attention of the Commission.

Francisco Eguiguren Praeli (Peru)

The candidate was nominated by the State of Peru

Dr. Eguiguren Praeli has a long career as a scholar and teacher of constitutional law, as well as a consultant to UN agencies and aid agencies. He has also had a distinguished career in government, including as Director General of the Judicial School, and as Minister of Justice (later Minister of Justice and Human Rights) in the first cabinet of President Ollanta Humala. He also has diplomatic experience as Ambassador to Spain.

1. High moral character

The Panel noted that, based on the written materials submitted and the publicly available information, the candidate has established that he is a person of high moral character and integrity. There is nothing in the record that indicates any sanction, ethical lapse or professional impropriety.

2. Recognized competence in human rights

The candidate has written and taught in the areas of constitutional law and human rights law for over three decades. Of his writings, a number pertain directly to the Inter-American system, including articles criticizing the withdrawal of Peru from the Inter-American Court (2001), and on freedom of thought, association and expression in the jurisprudence of the Court (2010, 2011, 2015). He has been a member of the Andean Commission of Jurists, and has worked as a consultant for the High Commission for Human Rights of the United Nations. He introduced the study of Inter-American Court decisions into the judicial curriculum, and promoted the change of the Justice Ministry into a Ministry of Justice and Human Rights.

He has experience in the Inter-American human rights system in several capacities. He was the Agent of the Peruvian state before the Court in the government of Valentín Paniagua, and in charge of the implementation and compliance with sentences of the Court involving the reinstatement of Constitutional Court judges removed during the Fujimori period, and in the *Baruch Ivcher* case. He was an ad-hoc Judge at the Court in the *Gómez Paquiyauri Brothers* case, in which he joined the unanimous decision against Peru. He has submitted reports and made presentations before the Commission, both as a petitioner and as a representative of the State. In his time as Minister of Justice, he promised on Oct. 25, 2011 in a hearing before the Commission, that Peru would have a cooperative attitude towards solving cases, especially those from the Fujimori era, before the Commission. In this regard, the candidate has demonstrated a familiarity with and understanding of the region and the Inter-American Human Rights System.

We find that the candidate meets the requirement of recognized competence in human rights.

3. Independence and impartiality

The Panel has not found public materials raising concerns about lack of independence and impartiality. While the candidate did serve as a member of the Executive Branch under the current president, as both Minister and Ambassador, his actions as an ad-hoc Judge and as a candidate for the Constitutional Court of Peru indicate independence.

The Panel also notes that the candidate was a candidate to the Constitutional Court of Peru in 2014. He received the support of the National Coordinating Body of Human Rights Organizations, among others, for the post. He withdrew his candidacy in the face of opposition from political parties that do not support the current government. According to press reports, he withdrew saying that, despite 30 years of experience in constitutional law, he lamented the fact that the process was now too politicized, and did not want to stand in the way of a new Court. He noted at the time that he is not a member of the governing party.

4. Evaluation of the challenges facing the Inter-American Human Rights system

In response to our question about challenges confronting the Inter-American Human Rights System and how they would affect his work as a Commissioner, the candidate wrote:

“The effort of reflection and the strengthening undertaken by the Inter-American Commission of Human Rights, although positive, is currently threatened by the attitude of some states that, in reality, seek to limit and weaken its actions, rather than strengthen them. To reach its strengthening, there needs to be a promotion of a sincere dialog between states represented in the OAS, the branches of the Inter-American System of Human Rights, and civil society organizations that result in agreements and effective compromise beyond rhetorical declarations.

But also the Commission needs to adopt operational measures and changes in its internal performance to act more effectively and dynamically. A serious problem is the accumulation of numerous complaints, many of them paralyzed or inactive for many years from the processing point of view. It is difficult to meet reasonable deadlines and that effects the aspiration for justice for the victims and generates judicial insecurity for the states. I believe that the Commission can advance in unblocking its backlog of accumulated pending petitions in processing and admission by taking the following actions:

- Conducting a review and evaluation of the complaints pending admission, in order to relieve or lighten the burden, proceeding to dismissal and filing of the cases that show prolonged periods of procedural inactivity attributable to petitioners or at the discretion of the Commission, they do not reach sufficient relevance or adequate support.

- Pursuing alternative to the Inter-American System of Human Rights should prevent further increasing of the backlog of complaints pending admission or processing, and more rigorously controlling the depletion of domestic remedies, except in urgent or serious cases that require its attention. Advancing qualification criteria for complaints, to affect the acceptance at admission or processing which go beyond the mere control of compliance with formal requirements, paying attention to the merits and relevance of the complaint.
- While the lack of sufficient budgetary resources have prevented greater physical presence and permanence of the Commissioners in the performance of the Commission, as well as having enough professional staff required to meet the large volume of complaints and other activities the Commission does. We estimate that this situation will not be easily solved in the short term; it requires the adoption of measures and creative action to address and reverse existing shortcomings.

To promote a speedier processing of cases, it appears appropriate and necessary that the Commission put special emphasis on friendly settlements with the states, in order to reach agreements that would require less need and volume of litigation. This requires a proactive and not merely passive attitude, in which the Commissioners should participate.

The Commission should encourage progress in the universalization of the Inter-American System on the Continent, by promoting ratification of the Convention and incorporation into the jurisdiction of the Court by States that have not yet done so. This requires special attention to dissemination and promotion. It also requires a push for training activities about the Inter-American System of Human Rights, aimed at strengthening national judicial systems, and so that its members know each other better and implement the Convention in their decisions and case law of the Court.

I believe that to advance on these measures, it requires a clear commitment and teamwork from the Commissioners, exercising leadership that works well with the Executive Secretary and the professional staff of the Commission. These are actions that, due to their complexity and the effort that they demand, are unlikely to be undertaken or achieve positive results if confined to individual or isolated initiatives.”

5. Other considerations

Dr. Eguiguren Praeli’s native tongue is Spanish, and he reads and understands English and Portuguese. He has had some exposure to other legal systems through his academic and consulting work, especially in the areas of constitutional, procedural and human rights law, although the bulk of his work has been with Peruvian law.

The candidate has indicated that he intends to continue teaching full time as a Professor in the Catholic University (PUC) and engaging in complementary activities as a consultant and legal advisor.

The candidate's work in private practice as an academic and legal advisor would not be incompatible with his duties as a Commissioner, assuming such consultancies did not raise conflicts of interest.

6. Conclusions

The Panel noted that this candidate is well respected and recognized as an expert in constitutional law, and has written about and interacted with the IAHRs as petitioner and as State agent. He would bring a background in government and diplomacy as well as academic work. His answer to the question about challenges reflects awareness and knowledge of the current debates about "strengthening" within the IAHRs, although they lacked specificity about some themes (precautionary measures, Chapter IV of the Commission's Annual Report, distribution of financial resources, status of the thematic rapporteurships, etc.).

Enrique Gil Botero (Colombia)

The candidate was nominated by the State of Colombia

Dr. Enrique Gil Botero is a magistrate who has had a long career in his country in the field of state responsibility for the actions of its institutions or officials (known as administrative litigation), due to his work in the State Council. The State Council is the highest judicial organ of Colombia in the administrative litigation field. It is a court that has distinguished itself for decisions exceptionally well founded in law and is independent of the public authorities or political pressure. Dr. Gil Botero also has extensive experience as a trial lawyer and as a university lecturer. He has recently retired from the State Council, and he keeps up his teaching and research activities in Colombia.

1. High moral character

The candidate's teaching, judicial and research activities are testimony of an experience that requires not only personal and professional integrity but also demonstrated moral character.

2. Recognized competence in human rights

Although Dr. Gil Botero has not acted in international areas of protection or promotion of human rights, his contributions to Council of State rulings demonstrate a deep knowledge of the jurisprudence of the Court and the Inter-American Commission, as well as that of other international treaty bodies. Such rulings are not limited to citing international jurisprudence; they also add their own doctrinal and philosophical assessments, without deviating from the line of protection of fundamental rights promoted by the legal organs of the OAS. In addition, they show a proper appreciation of the binding character that decisions of the Court have on the State in cases where the State is a party.

Particularly noteworthy are decisions (all of which were made with the participation of Dr. Gil Botero) in respect of matters adjudicated by the Inter-American Court of Human Rights concerning: State responsibility, moral and material reparations; gross violations committed by military and police, and also by paramilitary groups with the support of law enforcement authorities; the participation of agents in crimes of "social cleansing"; the non-expiry of the prosecutable period in enforced disappearances; the control of compliance in cases of failure of the State to protect vulnerable people; and State responsibility for falsely accusing a mother – a victim of sexual abuse – of a crime in regard to the death of her newborn daughter.

These decisions demonstrate a thorough knowledge of contemporary trends in international protection of human rights; they also constitute important contributions to the progressive development of the matter. They demonstrate

familiarity with the law and the standards of the Inter-American Court of Human Rights.

3. Independence and impartiality

The rulings mentioned above, and indeed the entire trajectory of the State Council in Colombia, are marked by a well-recognized independence and impartiality in the hearing of cases concerning State responsibility for the actions of its institutions and officials, especially in cases of significant social and political impact.

4. Evaluation of the challenges facing the Inter-American Human Rights System

In response to our question about challenges confronting the Inter-American Human Rights System and how they would affect his work as a Commissioner, the candidate wrote:

“One of the great challenges is to create mechanisms to expand the diffusion and dissemination of human rights. Additionally, I believe that it is necessary to design policies that would permit the Inter-American Commission on Human Rights to approach each of the member countries that are part of the inter-American system of human rights.”

5. Other considerations

The candidate speaks Spanish and has not worked in other legal systems. He plans to continue working as a lecturer and researcher. His academic work and his work as an academic researcher would not be incompatible with his other responsibilities as a Commissioner.

6. Conclusions

In relation to the challenges facing the IAHRs, and in response to our questionnaire, the candidate referred to the dissemination of the decisions of the Commission and the Court and also to the need to design policies that would allow for deepening of the relationship between the Commission and member States. Such responses are adequate, certainly, to address some of the issues discussed during the so-called process of "strengthening" of the system that was completed in June 2014. It would have been useful to know in somewhat more detail what the characteristics of such policies would be. There were no contributions to the debate on the issues discussed in 2013 and 2014 (precautionary measures, a report on Chapter IV, distribution of funds, status of the rapporteurs on various topics, delays in the processing of requests, etc.).

Dr. Gil Botero would bring undeniable contributions to the Inter-American Commission on Human Rights, especially for his recognized ability to make doctrinal and philosophical contributions to the progressive development of human

rights. His knowledge of the law on State extra-contractual damages (torts, about which he wrote a text) and reparations would also be a contribution.

The Panel noted the candidate's lack of facility in any language other than Spanish, although this is not a requirement in regard to qualifications as a Commissioner.

Margarette May Macaulay (Jamaica)
The candidate was nominated by the State of Jamaica

Ms. May Macaulay has spent her professional life as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica. She is both a practitioner and academic in the area of human rights. The candidate has also been a strong and persistent NGO advocate not only for women and children's rights, gender equality, gender-based violence but also in the area of the abolition of the death penalty in the Caribbean and of environmental rights.

1. High moral character

The Panel noted that, based on the written materials submitted and the publicly available information, although not exhaustive, the candidate has established that she is a person of high moral character and integrity. In 2007 the candidate met the qualifications of appointment as a judge to the Inter-American Court of Human Rights and served in this position until 2012. There is nothing in the record that indicates any sanction, ethical lapse or professional impropriety.

2. Recognized competence in human rights

The candidate is a member of the Human Rights and Constitutional Committees of the Jamaican Bar Association. She is a member of several human rights organizations nationally and internationally including the Coalition for an International Criminal Court and the Women's Gender Initiative in The Hague. She advocated for the establishment of the ICC and was a NGO participant in the negotiations for Rules of Evidence and Procedure for the Court. She has been involved in law reform in Jamaica as well, including the ratification of the Convention of Belem do Pará and other human rights instruments.

She has written numerous articles on human rights, including one entitled "The Inter-American Court of Human Rights" (2007) and another, "The Relationship of the English-speaking Caribbean and the Inter-American System of Human Rights" (2008). In this regard, the candidate has demonstrated a familiarity with and understanding of the region and the Inter-American Human Rights System.

3. Independence and impartiality

As indicated above, the candidate has established her ability to exercise independence and impartiality during her tenure on the Inter-American Court.

The Panel has not found any public materials raising concerns about lack of independence and impartiality.

4. Evaluation of the challenges facing the Inter-American Human Rights System

In response to our question about challenges confronting the Inter-American Human Rights System and how they would affect her work as a Commissioner, the candidate wrote:

“Available resources and ensuring greater collaboration from the States Parties in order to shorten the processing time of petitions, and for the possible achievement of friendly settlements, and if not, the submission of the case to the Court without delay. The lack of resources and delays by States impede our due administration of justice for petitioners and for state parties. The members of the Commission must however strive to overcome these impediments and seek the means to make changes, which would aid with its work being done in a timely and efficient manner. The existing systems will have to be carefully examined to determine the weaknesses and seek to make the necessary changes. “

5. Other considerations

The candidate speaks English and has worked in common law systems. She is familiar with civil law systems through her work as a Judge for the Inter-American Court.

She indicates that she will continue to practice law in Jamaica, with the assistance of a junior attorney, and will be fully available for the work of the Commission as may be assigned to her. The candidate’s work in private practice as an attorney would not be incompatible with her duties as a Commissioner.

6. Conclusions

The Panel noted that this candidate is well respected and recognized as an expert in human rights and humanitarian law, with expertise in women’s and children’s rights and the death penalty. She would also bring to the Commission her practical experience as a judge of the Inter-American Court and her knowledge of its operation and administration.

The Panel noted the candidate’s lack of facility with Spanish, Portuguese or French, although this is not a requirement in regard to qualifications as a Commissioner.

Douglas Mendes (Trinidad and Tobago)

The candidate was nominated by the State of St. Kitts & Nevis

Mr. Mendes is a well-known human rights lawyer in the English-speaking Caribbean. He has worked in the area of human rights for more than two decades particularly in the areas of the death penalty, gender equality, violence against women, LGBTI rights and workers' rights. He has written widely on these themes as well as on the independence of the judiciary. He is a practitioner, academic and dedicated NGO advocate in the area of human rights.

1. High moral character

The Panel noted that, based on the written materials submitted and the publicly available information, the candidate has established that he is a person of high moral character and integrity. The candidate has served on the Supreme Court of Trinidad and Tobago as an Acting Judge and as a substantive Judge on the Court of Appeal for Belize. There is nothing in the record that indicates any sanction, ethical lapse or professional impropriety.

2. Recognized competence in human rights

The candidate has published extensively and presented many papers on human rights. His Masters thesis in international human rights was entitled: "The doctrine of Legitimate Expectation and the enforcement of International Human Rights Treaties in Domestic law – a Commonwealth Caribbean Prerogative". He was a Council member of the International Council on Human Rights Policy for one year.

The candidate has appeared before both the Commission and the Court as Co-Counsel in two death penalty matters, *DaCosta Cadogan v Barbados*, judgment of September 24, 2009 and *Boyce et al. v Barbados*, Judgment of November 20, 2007. In this regard, the candidate has demonstrated a familiarity with and understanding of the Inter-American Human Rights System.

We find that the candidate meets the requirement of recognized competence in human rights.

3. Independence and impartiality

The candidate has served as a judge in both the High Court of Trinidad and Tobago and the Court of Appeal of Belize over a multi-year period. Some of his judgments have been reported in the West Indian Law reports and have been upheld by the Privy Council.

The Panel has not found any public materials raising concerns about lack of independence and impartiality.

4. Evaluation of the challenges facing the Inter-American Human Rights system

In response to our question about challenges confronting the Inter-American Human Rights System and how they would affect his work as a Commissioner, the candidate wrote:

“The most difficult challenge facing the Inter-American Human Rights system is the lack of resources, both human and financial, with which the Commission is provided to carry out its mandate. This results, primarily, in significant delays in the resolution of petitions before it. It is important that the Commission carry out fully its functions of promoting human rights in the countries which fall within its purview. This necessitates country visits and organizing assessments of human rights violations in each territory. But the more time the Commissioners spend on country visits, the less time they have to spend on petitions.

Equally important is the need to ensure that petitions are brought to a determination without undue delay. This requires sufficient technical staff to prepare the groundwork for the Commissioners, and the devotion of sufficient time by the Commissioners to deliberate on petitions. The few weeks allocated each year for this purpose is plainly insufficient. Naturally, this scenario will affect the ability of all members of the Commission to discharge their functions in a timely and judicious fashion.”

5. Other considerations

Mr. Mendes speaks English and has worked in common law systems. The candidate indicates that he will continue to practice law in Trinidad & Tobago and submit a weekly article to the daily.

The candidate’s work in private practice as an academic and legal advisor would not be incompatible with his duties as a Commissioner.

6. Conclusions

The Panel noted that this candidate is well respected and recognized as an expert in human rights and humanitarian law in the English-speaking Caribbean, with expertise in women’s rights, LGBTI rights, workers’ rights and the death penalty. He would also bring to the Commission his practical experience as a representative of victims before the Commission and the Inter-American Court and his knowledge of their operation and administration. His answers to questions about the challenges facing the System indicate familiarity and desire to strengthen the system, but not necessarily an intimate familiarity with the specifics of the “reform” process carried out over the last few years.

The Panel noted the candidate’s lack of facility with Spanish, Portuguese or French, although this is not a requirement in regard to qualifications as a Commissioner.

Sandra Soriano Bascopé (Bolivia)

The candidate was nominated by the Plurinational State of Bolivia

Despite multiple efforts to contact Ms. Soriano Bascopé, the Panel never received a response to our request for answers to a questionnaire. We thus do not have the benefit of the candidate's own views and responses, and have had to rely entirely on publicly available information. She was the only candidate for the Commission who did not respond to the questionnaire.

I. High moral character

The Panel noted that, with extremely incomplete data, it was very difficult to evaluate this requirement. The candidate has served as a lawyer and politician. In her role as a Senator and member of the Ethics Commission, as well as a number of other committees, she took strong political positions and used harsh language towards political opponents, both in person and via social media. Nonetheless, this is not necessarily indicative of what her actions would be in a different potential role. There is nothing in the record that indicates any sanction, ethical lapse or professional impropriety in her work as an attorney and advocate.

2. Recognized competence in human rights

The candidate was an attorney for several labor unions, and has been an advocate for the rights of women and children. During her period as Senator, she was a member of the Human Rights Committee of the Senate. As such, she was involved in a number of legislative and other initiatives to introduce human rights into police training, to curb violence against women, establish legal protections for children, create a Prosecutions office (Procuraduría), promote the rights of indigenous peoples, and others. These demonstrate familiarity with and competence in a number of key human rights issues at the national level. The candidate is familiar with international law and international courts through her work supporting Bolivia's claim against Chile in the International Court of Justice, and through meetings on the ICC.

However, we could find no specific writings, presentations or work specifically on human rights in the Inter-American context, or familiarity with the work or jurisprudence of the Inter-American Court or Commission or of other international human rights bodies or instruments.

3. Independence and impartiality

The candidate has been a close collaborator of Bolivian President Evo Morales since he was first elected President. She has served in the Senate as a member of the governing MAS party. As part of her duties in the Senate, she was involved in the impeachment of a number of judges of the Plurinational Constitutional Tribunal, as a result of their rulings against a Notaries Law. Her term in the Senate is now over.

Prior government service is common among candidates as well as former Commissioners, and does not per se indicate a lack of independence and impartiality. However, without more information it is difficult for the Panel to conclude whether or not in her future endeavors she will be in a position to avoid conflicts of interest or to maintain the necessary independence and impartiality.

4. Evaluation of the challenges facing the Inter-American Human Rights System

We have no information on this point.

5. Other qualifications

We have no information on the candidate's future endeavors, her language capabilities, or her knowledge of legal systems other than her own.

6. Conclusions

This candidate would bring strengths in geographic and gender diversity, has experience in the protection of workers' rights, protections in the criminal justice system, and the rights of women and children, and would bring new capabilities in the use of technology and social media. However, we are concerned that she has insufficient knowledge of, and experience with, the workings of international human rights law and the IAHRS in particular; we are also concerned about a potential lack of independence and impartiality given her close affiliation with the current government of Bolivia. We regret that the candidate chose not to engage with the Panel, as answers to the questionnaire we administered to all of the candidates might have put many of these concerns to rest.

Inter-American Court of Human Rights

Elizabeth Odio Benito

The candidate was nominated by the State Of Costa Rica

Judge Odio Benito has been working in the fields of international human rights and international humanitarian law for decades. She has experience with international human rights bodies, as Minister of Justice and later Vice-President of Costa Rica, and most recently as a judge at the International Criminal Tribunal for the former Yugoslavia and the ICC. She has particular expertise in the rights of women.

1. Highest moral authority

The Panel noted that, based on the written materials submitted and the publically available information, the candidate has established that she is a person of the highest moral authority. The candidate has been elected to, and served as, a Judge of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court (ICC). In both international tribunals, candidates for election to the office of judge must be of high moral character and exhibit impartiality and integrity, and the UN Security Council (in the case of the ICTY) and Assembly of States Parties (in the case of the ICC) have already found that this candidate meets the requirement. In addition, the candidate has won a number of prizes; nothing in the record indicates any sanction, ethical lapse or professional impropriety.

2. Recognized competence in the field of human rights generally, and in the Inter-American System in particular

The candidate has spent most of her professional life in positions that require competence in human rights and related fields of law. She was a member of the UN Human Rights Commission's Sub-Commission from 1980-83, and its Special Rapporteur on Discrimination based on Religion or Belief (1983-86). She was a delegate to the 1993 Vienna Conference on Human Rights and part of the working group that drafted the Optional Protocol to the Convention Against Torture. She has been a judge at the ICTY and ICC. In her role as an ICC Judge, she wrote a dissenting opinion in the *Lubanga* case focused, among others, on the need to take into account the needs of victims of the crime of recruitment of child soldiers, as well as those of the prosecution. She also focused on the gender implications of characterizations of aspects of the crime of recruitment. In the ICTY, she sat on the panel for the *Celebici* case, which concerned crimes of sexual violence and laid the groundwork for subsequent cases including these crimes.

The candidate has been particularly active in the fields of the protection of the rights of women, religious freedom, anti-discrimination and the prevention of torture. She

also has expertise in international humanitarian law, especially crimes of sexual violence.

She has written numerous academic articles on human rights, including one specifically on the operation of the Inter-American Human Rights system (2010). She has not, however, as far as well could tell ever litigated or represented clients before the Commission or Court. As Minister of Justice of Costa Rica, she applied the American Convention on Human Rights and other instruments to preventative criminal policy and policies regarding detainees and convicted persons.

3. Qualifications for the highest judicial office under the law of the state of which they are nationals or the state that proposes them

Article 159 of the Costa Rican Constitution establishes that to be a Magistrate a candidate must: be Costa Rican by birth or naturalization and have been resident in the country for at least ten years; be an active voter; not be a member of a religious order; be at least 35 years old; hold a law degree, issued or recognized by Costa Rica, and at least ten years experience in the legal profession. The candidate meets these requirements.

4. Independence and impartiality

The candidate has served in the past as a member of Costa Rica's executive branch, including as Vice-President and Minister of Justice. In her role as Judge of the ICC, a challenge was raised to the compatibility of her election as Second Vice-President of Costa Rica with her continued work as a judge. However, the plenary of judges decided that, because she would not take up the position as vice-president until her service with the Court had finished, there was no incompatibility. We have found no other instance involving the appearance or reality of lack of independence or impartiality.

5. Evaluation of challenges facing the Inter-American Human Rights System

In response to a question about the challenges facing the Inter-American Human Rights System and how they could affect her work as a judge, the candidate responded:

“To achieve the cooperation of all OAS Member States, whether or not they have accepted the jurisdiction of the Court, so that the system can work in a coordinated fashion. That is, that both the Commission and the Court have the economic and human resources and the political support needed to fully carry out the important tasks entrusted to them by the OAS Charter and the American Convention.

It is fundamental that countries comply with the obligations that the decisions of the Court impose on them. If the decisions are not complied with, the whole system loses legitimacy and that is catastrophic for all the inhabitants of the continent.

Taking into account that democracy is only truly worthy of the name when it is solidly grounded in respect for the fundamental rights of all the people who make up that society.

In the immediate future what is needed is that the Court grow closer to the States, both the governments and the citizens. It's important that the Convention, the Protocols, and the basic documents of the system, as well as the bodies that make it up, are disseminated and become better known. So that everyone knows how to use them to seek protection when their rights are violated. For women and groups that have been historically discriminated against (indigenous peoples, Afro-descendants, sexual minorities, among others) it is crucial that they know how and where to go in search of justice.

It is fundamental to truly integrate Latin America with the Caricom countries in all the bodies of the system.

If the whole system doesn't function right, in a coordinated and coherent manner, the work of the Judges will of course be seriously affected."

6. Other competences

The candidate speaks, reads and writes Spanish and English, and reads and understands French and Portuguese. She is familiar with legal systems other than her own through her work drafting a Code of Procedure for the ICTY and her work with the ICC, which required working with the legal codes of a number of countries, both civil law and common law. She has administrative experience with courts, having served as Vice-President of both the ICTY and the ICC in their first years.

If elected, the candidate would not hold another position except for occasional academic duties.

7. Conclusions

Judge Odio Benito has a long and distinguished career as an international jurist and human rights academic and advocate. She is highly qualified, well respected and recognized as an expert in human rights and humanitarian law, with expertise in women's rights and in the prevention of torture, in particular. She would be a strong advocate for women's rights, and would contribute to gender diversity. She would also bring to the Court an unusual wealth of experience in international court operation and administration, and practical experience as a judge. One area of concern is a lack of experience working in the Inter-American system; however, she has written academic articles on the topic and worked with Inter-American standards during her government service. Her answers to the question on challenges to the IAHRs demonstrate knowledge of current issues.

Patricio Pazmiño Freire
Nominated by the Government of Ecuador

Patricio Pazmiño is currently the President of the Constitutional Court of Ecuador. He has held a number of posts in the government, as a consultant on human rights-related issues, as an academic and within non-governmental organizations.

Despite multiple efforts to contact him, the Panel never received a response to our request for answers to a questionnaire. We thus do not have the benefit of the candidate's own views and responses to a number of questions, and have had to rely entirely on publicly available information.

1. Highest moral authority

The nomination of Patrício Pazmiño to the Inter-American Court of Human Rights aroused strong controversy in Ecuador. The applicant himself reports in his blog the scandal of *Cerveceria Nacional*, in which he was accused of bribery to benefit the company in a multi-million dollar lawsuit. The Prosecution Service filed an accusation,, but the Constitutional Court dismissed the accusation against him. However, according to his blog, the case continues under the jurisdiction of the Constitutional Court, of which Pazmiño is the President. Patricio Pazmiño recused himself and is not taking part in the case against himself and others.

2. Recognized competence in the field of human rights generally, and in the Inter-American System in particular

The applicant has academic experience and expertise in the field of economic, social and cultural human rights, and human rights and the environment, as a guest professor at several universities. In addition, he has professional experience at national and international levels in this area as a lawyer and a consultant. He deals with human rights themes as a judge. His curriculum highlights publications in this area.

3. Qualifications for the highest judicial office under the law of the state of which they are nationals or the state that proposes them

Article 183 of the Constitution of Ecuador establishes that to be a National Court Judge a candidate must: be Ecuadorian able to exercise political rights, hold a law degree, and have ethically practiced as a lawyer, a law professor or a lower court judge for at least ten years. The candidate meets these requirements.

4. Independence and impartiality

The candidate is currently the President of the Constitutional Court of Ecuador. He was nominated after Congress dismissed the entire membership of the previous Constitutional Court without allowing them to use the remedy of *amparo* against

Congress' decisions. In August 2013, the Inter-American Court of Human Rights, in the case of *Camba Campos et al. v Ecuador*, found that the State had violated due process norms by the arbitrary termination and impeachment proceedings against the members of the previous Constitutional Court, harming their right to judicial independence and impartiality. In that judgment, the same violations were found in the dismissal of the Electoral Court. In addition, similar violations were found in the dismissal of all the members of the Supreme Court of Ecuador.

The candidate was appointed to the Constitutional Court that succeeded the provisional one by the plenary of the National Assembly. As to his work at the Constitutional Court, the candidate has received criticism to which he has responded in his blog or in interviews. He explained, for example, that he had voted for the constitutionality of the possibility of indefinite reelection of the President, because it did not constitute a restriction on any right and enabled citizens to decide whether they wished the President to continue his mandate.

His blog also reports that the Constitutional Court was severely criticized for having upheld the constitutionality of the application of an amnesty law to a man convicted of rape of a minor, although that amnesty was intended to benefit defenders of the environment and of peasant land rights who had been wrongly convicted for other crimes. The candidate had been assigned to write the Constitutional Court's decision, which caused a severe reaction in the office of the Federal Attorney General. The former National Prosecutor, Washington Pesantez, decided to prosecute Pazmiño and the other judges for prevarication and abuse of power, but the new Prosecutor, Gallo Chiriboga, reversed this decision, and the National Court of Justice decided to close the case, saying that nobody, not even a judge, could challenge a decision of the "Asamblea Constituyente."

Given the information found in Mr. Pazmiño's blog and other public information, it is difficult for the Panel to conclude whether or not the candidate will be in a position to avoid conflicts of interest or to maintain the necessary independence and impartiality with regard to the Ecuadorian executive branch.

5. Evaluation of challenges facing the Inter-American Human Rights System

The applicant has submitted a proposal of programmatic lines he will pursue if he is elected as judge. This proposal is available at the end of the curriculum vitae that was submitted to the OAS by the government of Ecuador.

6. Other competences

In 2012, the candidate applied for the position of secretary-general of the Inter-American Commission of Human Rights, but did not succeed.

We regret that the candidate chose not to engage with the Panel and answer its questionnaire. Several points were left unanswered, such as, for example, whether

he will resign from the Constitutional Court if he gets elected to the Inter-American Court. We also have no information on language capabilities or exposure to common law systems.

7. Conclusions

The applicant has experience and knowledge in the field of human rights, especially environmental and economic, social and cultural rights. He also has experience as a judge.

However, the Panel has no information on whether the case in which he was prosecuted is still pending before the same Court over which he presides (although he is not taking part in it as a judge). This raises concerns about his compliance with the two requirements set forth in Article 52.1 of the American Convention. A further matter of concern is what would happen if the candidate remained as a member of the Constitutional Court. We could find no recent precedent for a current member of a State's highest court holding a concurrent position as a judge in the Inter-American Court. Although the text of the Convention and Statute do not prohibit this *per se*, we think it raises serious concerns both from the standpoint of a workload that might prevent him from discharging his duties, and of potential conflicts of interest.

Alberto Pérez Pérez
Nominated by the State of Uruguay

Judge Pérez Pérez has been for many years a respected Professor of International Law, Constitutional Law and International Human Rights Law. This assessment has taken into consideration that the candidate is seeking reelection.

1. Highest moral authority

The candidate received a medal to honor his 50 years teaching Law at the University of Montevideo and in 2014 was declared “Ciudadano Ilustre” of Montevideo. This reflects in our view his high moral authority. There is nothing in the record that indicates any sanction, ethical lapse or professional impropriety.

2. Recognized competence in the field of human rights generally, and in the Inter-American System in particular

Judge Pérez Pérez’s academic trajectory and the amount of publications on human rights attest to his knowledge of constitutional law, international law, human rights and of the inter-American system in particular. In addition, his performance during his six years as a judge of the Inter-American Court of Human Rights demonstrates his knowledge in the area of human rights and in all the inter-American human rights instruments.

He has written four concurring opinions during his term in the Court. One concurring opinion dealt with the conflict that may arise between the restriction of freedom of expression and laws to protect the honor and dignity of a person. Applying standard rules to weigh the two rights in conflict, Judge Pérez concurred with the Court in finding for the State, which had convicted two persons, one a journalist, of libel and slander. Another concurring opinion was given in the case of *Suárez Peralta v Ecuador*, which dealt with the responsibility of the State for not ensuring the right to personal integrity of Ms. Suárez, following its case law that has found a direct and immediate link between the right to personal integrity and the attention to the right to health. The purpose of Judge Pérez’s vote is stated at the beginning: “The purpose of this separate opinion is exclusively to make it clear that the references to the right to health contained in the judgment do not mean that the Court is assuming competence with regard to this right in particular, or to economic, social and cultural rights in general. The contentious competence of the Court is established in Article 62 of the American Convention, and in paragraph 6 of Article 19 of the Protocol of San Salvador, without prejudice to the pertinent provisions in other inter-American human rights conventions.”

In addition, in the *Atala Riffo* case against Chile, regarding discrimination caused by sexual orientation, Judge Perez agreed with the substance of the Court’s decision but opined that the facts did not constitute a violation of article 17 of the Convention (right of the family) but only a violation of article 11.2 (right to a private life),

arguing that deciding on a violation of article 17 “could be taken as an implicit pronouncement on the interpretation of various provisions of said Article.” From these votes, it is clear that he has expertise in the application of international human rights law.

Judge Pérez Pérez’s answers to the questionnaire prepared by the Panel shows a person with a long and deep commitment to human rights expressed in several activities other than just teaching international human rights law. He has advocated for human rights throughout his career, collaborating with human rights NGOs, producing papers for national States organizations and others.

3. Qualifications for the highest judicial office under the law of the state of which they are nationals or the state that proposes them

Article 235 of the Constitution of Uruguay establishes that to be a Magistrate a candidate must: be Uruguayan by birth or naturalization for at least 10 years with a residence in the country for at least 25 years; be 40 years old; hold a law degree for 10 years or have been a judge, worked at the General Prosecutor’s Office or have been a Prosecutor for 8 years. The candidate meets these requirements.

4. Independence and impartiality

Nothing in his work as a judge or in his writings raises concerns about his independence and impartiality. So far, none of his positions appear to have been incompatible with his work at the Court. He has continued teaching and doing translation work at the United Nations and at the International Criminal Court and expects he will continue to carry out that work if he is reelected. Thus, he would comply with the requirement of article 71 of the Convention.

5. Evaluation of challenges facing the Inter-American Human Rights System

In response to a question about the challenges facing the Inter-American Human Rights System and how they could affect his work as a judge, the candidate responded:

“One of the main challenges faced by the Inter-American System of Human Rights is reaching universality in terms of full participations of American States. In addition, it is necessary to maintain and strengthen the autonomy of the bodies of the system and particularly the independence of the Inter-American Court of Human Rights as a jurisdictional body. For this, it is essential to provide these bodies with adequate funding. Also it will be needed to take all necessary measures to ensure full compliance with the Court’s judgments and decisions.

With all respect, I understand that the American States also face the challenge of developing the norms relating to the various human rights, both in those aspects not

explicitly mentioned in the Convention and in the relationship to the economic, social and cultural rights of the Protocol of San Salvador with a view to achieving their full justiciability.

Regarding my eventual input as a judge, I find that the Inter-American Court must continue its fundamental work of a progressive and thoughtful interpretation of the American Convention and other applicable instruments. This interpretation so far has achieved very important advances. Decisions of a court that does not possess a police force or other material elements to obtain its enforcement will only be complied with if their contents and reasoning are convincing to the States to which they are addressed. The history of the Inter-American Court is rich and generally successful. It is necessary to work hard to carry it forward.”

In the Panel’s view, this answer shows a clear perception of the region and of the challenges that the system as a whole has to face in the future.

6. Other competences

Regarding other aspects important for the Court, it is an asset that he speaks Spanish as a native tongue, is fluent in English and French and has a good knowledge of Portuguese. These are the four official languages of the Court. His work at the United Nations and his studies on Comparative Law constitute positive factors to perform functions as a judge of the Inter-American Court. He appears to have no problems working in a collective body.

7. Conclusions

We find that this candidate fulfills all the requirements established by the American Convention and by the Court’s Statute and has several other positive characteristics that support his nomination to continue being a judge in the Court. He may have a special sensitivity to human rights, as he was himself an exile during the dictatorship in Uruguay. Were he to be elected he would bring wide-ranging experience to the Court. The Panel finds no concerns regarding his candidacy.

Eduardo Vio Grossi
Nominated by the State of Chile

Judge Vio Grossi is a long-time academic, with experience and expertise in international law and human rights. He is a member of the Permanent Court of Arbitration in The Hague, and has been a member of the Inter-American Juridical Committee, among other accomplishments. This assessment has taken into consideration that the candidate is seeking reelection.

1. Highest moral authority

The candidate has been a judge of the Inter-American Court for six years. In addition, the Panel notes that, based on the written materials submitted and the publicly available information, the candidate has established that he is a person of high moral character and integrity.

2. Recognized competence in the field of human rights generally, and in the Inter-American System in particular

The applicant has academic and professional experience at national and international levels in the field of international law and human rights as a professor, lawyer and judge. His curriculum vitae highlights papers and articles on Public International Law and Human Rights.

3. Qualifications for the highest judicial office under the law of the state of which they are nationals or the state that proposes them

Article 78 of the Constitution requires judges of the Supreme Court to have Chilean nationality, a law degree and, if they were not previously judges, at least fifteen years of distinguished experience. Judge Vio Grossi meets these requirements.

4. Independence and impartiality

Judge Vio Grossi's decisions reflect his independence and impartiality. He has a considerable number of independent opinions, sometimes concurring and sometimes dissenting from the majority. In the case *Artavia Murillo v Costa Rica* he rendered a dissenting opinion arguing the incompatibility of in vitro fertilization with article 4 of the American Convention. He stated that the Inter-American Court had taken a position on a definition of right to life that was not consensual and that exceeded its jurisdiction.

As for the case *Lopez Mendoza v Venezuela*, in which the main point was the sanction of disqualification imposed on Mr. López Mendoza by way of a decision of an administrative body, which prevented him from registering his candidacy for an elective office, the Court found that there had been a violation of the right to political participation and to due process of law. In his concurring opinion, Judge Vio Grossi

conducted a thorough examination of the rules of interpretation in the Vienna Convention to conclude that he agreed with the majority of the Court.

Another dissenting vote that is worth pointing out refers to the case *Memoli v Argentina*. The Inter-American Court decided that a criminal conviction for libel and slander does not affect freedom of expression. Judge Vio Grossi – and two other judges – dissented, saying that a criminal conviction does violate such a fundamental right. A journalist had denounced a scheme of sale of public assets and was convicted and sentenced to imprisonment.

These votes and others show the candidate's technical expertise and knowledge of human rights.

5. Evaluation of challenges facing the Inter-American Human Rights System

The candidate did not answer the questionnaire prepared by the Panel, but responded to its request. He explained that he thought his professional trajectory, the decisions of the Inter-American Court in which he has participated and the individual opinions he has written should be enough information for the Panel. He also expressed that he felt somewhat uncomfortable to be asked to justify the reasons on which to base a decision for his reelection. As a judge, he is not only subjected to the verdict of the community but to the imperative of acting independently and impartially. Both these qualities might be compromised if he were to present evidence of his actions.

6. Other competences

We regret that the candidate chose not to engage with the Panel, as answers to the questionnaire we administered to all the candidates could have probably enabled us to mention other qualifications that he may have.

7. Conclusions

Judge Vio Grossi's experience in human rights matters is extensive and well-known, his votes indicate his independence, and his curriculum demonstrates his background related to the theme of human rights. He has a solid basis of expertise in international law. He fulfills the requirements to continue as a Judge at the Inter-American Court of Human Rights.

Eugenio Raul Zaffaroni
Nominated by the State of Argentina

Judge Zaffaroni has been a judge for more than 35 years and a University professor of Criminal Law for a similar period. He has recently retired from a lengthy period of service on the Supreme Court of Argentina.

1. Highest moral authority

Judge Zaffaroni has received the title of Doctor Honoris Causa in over 30 universities of the region and of Europe. He has also received several prizes for his work. He is Emeritus Professor of the University of Buenos Aires.

During the procedures followed to elect him as a member of the Supreme Court, which attracted much public debate, there was a thorough discussion of his personal finances and ethics. At the time, over 80 percent of the law students in the University of Buenos Aires voted in favor of Judge Zaffaroni's candidacy, arguing that he would help recover the independence of the Supreme Court and help all individuals to have access to all judicial guarantees without discrimination.

All of this attests to the respect Judge Zaffaroni has earned at an international and national level and shows his high moral character.

2. Recognized competence in the field of human rights generally, and in the Inter-American System in particular

The candidate is an internationally recognized professor of Criminal Law. He has written extensively in this area. His performance in the Supreme Court of Argentina, from which he recently retired, demonstrates his knowledge of general law, criminal law and human rights law. He has voted mainly in consonance with the majority of the Supreme Court, being one of the judges who declared the unconstitutionality of the two impunity laws (*ley de obediencia debida* and *ley de punto final*), a decision that permitted the investigation of egregious human rights violations perpetrated during the dictatorship. Among others, this pronouncement of the Supreme Court paved the way for trial and conviction in the Simón Case, following the judgment in the Inter-American Court's *Barrios Altos v Peru* case. Judge Zaffaroni stressed in that judgment that there was no need to look for other reasons to justify the judgment than the fact that international human rights law formed one body with national law according to article 75 of the Argentinean Constitution, and international human rights law had rendered ineffective the Obediencia Debida and Punto Final laws. He has consistently applied the Inter-American Convention on Human Rights and other human rights instruments in all of his judgments.

Judge Zaffaroni has a record of many years dedicated to the development of human rights law in Argentina. He was instrumental in the campaign to have the ACHR ratified by that country as soon as there was an elected President in 1983. He

coordinated the visit of the Executive Secretary of the Commission at the beginning of the new President's term with a view of helping the Convention's ratification. In 1994 he was a member of the constituent body voting for the inclusion of all human rights treaties in the Constitution of Argentina.

He has also worked at a regional level as Director General of ILANUD (*Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y del Tratamiento del delincuente*). He was the head at the Argentinean *Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo* and has written on the subject. He has been interviewed frequently and his position has been constantly in support of human rights according to the interpretations given by the Inter-American Court (for example, regarding the adversarial system in criminal law and the limited reasons to allow preventive detention).

Everything the Panel consulted points to the opinion that Judge Zaffaroni is knowledgeable about the Inter-American System for the protection of human rights and has considerable work in this field. Although his specialization is in criminal law, it should be noted that the range of his knowledge is wide and extends to discrimination, environment, indigenous peoples and constitutional law.

3. Qualifications for the highest judicial office under the law of the state of which they are nationals or the state that proposes them

Judge Zaffaroni possesses the qualifications to exercise the higher judicial functions under the law of Argentina. He has a law degree, and has been a lawyer for well over the number of years required by the Argentinian Constitution.

4. Independence and impartiality

Nothing in his record as a Supreme Court judge or in his academic career shows that Judge Zaffaroni has not been independent or impartial in his actions. He is now retired from the Supreme Court. He does not foresee in the future carrying out activities other than academic ones, so there is no concern about a conflict of interest if he were to be elected.

5. Evaluation of challenges facing the Inter-American Human Rights System

In response to a question about the challenges facing the Inter-American Human Rights System and how they could affect his work as a judge, the candidate responded:

"The Inter-American System must be strengthened. The major challenge is to convince the various governments of the need of its existence, even if they are occasionally bothered by some decisions. I think it is a diplomatic type of work that should be carried out in addition to the specifically legal tasks. Firmness must be maintained along with diplomacy; strengthen the conviction that the system is

essential and continue promoting the realization of human rights, that is to bring nearer 'what is' to what 'should be.' I believe that certain cases cannot be resolved with some simple judgment but require procedures to stay open for some time, with commitments [of the States], controls and progress reports.”

6. Other competences

Regarding other aspects important for the Court, it is an asset that Judge Zaffaroni speaks Spanish as a native tongue, and in addition English, Italian, Portuguese, and German. This constitutes three of the four official languages of the Court.

His work at the Supreme Court attests to his experience in working within a collective body. He has lectured and written about a number of legal systems.

7. Conclusions

The candidate fulfills the requirements to be a Judge of the Inter-American Court of Human Rights. He has an international reputation in criminal law and a long and respected career as an academic. Aside from his academic record and knowledge, were he elected he would bring to the Court a considerable wealth of experience in judicial practice.

PART II: Recommendations

1. The current system of election and its deficiencies

Election of judges to the Inter-American Court of Human Rights and of members to the Inter-American Commission on Human Rights is governed by the American Convention on Human Rights (Arts. 36-37 and 52-53) and, respectively, by the Statutes of each organ, as amended (Arts. 6 to 9 of the Statute of the Court and Arts. 3 to 5 of the Statute of the Commission). All member States of the OAS in active standing can nominate and vote for members of the Commission; in the case of the judges of the Court, nomination and voting is restricted to the States that have signed and ratified the American Convention. Other than that difference, the process is the same for both organs, including the fact that elections take place at the meeting of the General Assembly of the OAS, either at a regular annual meeting or a specially convened one.

States are allowed to present three candidates for each position, in which case at least one of the nominees must be a national of a different State. In practice, however, States generally nominate one person for the position open, or sometimes one for the Court and one for the Commission. The nominations are posted and announced many weeks or months before the actual election, which allows for members of civil society to comment on the respective qualifications of candidates.

It is very rare for States to adopt decisions about nominations by means of a public consultation within the country. At most there is an occasional exchange of information and comments with a few actors in civil society organizations, invariably in an informal and mostly confidential manner. The process thus does not necessarily generate nominees that are the most highly qualified for the job nor does it guarantee that the requirements of impartiality and independence are met.

Nevertheless, it cannot be denied that over the years both the Commission and the Court have benefitted from the presence of persons of impeccable credentials and extensive experience in human rights. These good results have generally coincided with demonstrations of interest in the Inter-American system of protection in several countries, which results in more active involvement of the public and particularly of the domestic human rights organizations in the decision-making leading to nominations. But it is also undeniable that the process has been at best uneven. It is certainly not the case that all candidates to the Court or Commission have always been of the highest quality.

Once the nominations are submitted and made public, States initiate campaigns to obtain votes in support of the candidates they have presented. This takes place mostly as a series of bilateral meetings with the Permanent Missions of other countries before the OAS, at which States other than the nominating State can have the chance to ask questions and become familiar with the qualifications of the candidate. In some instances, the visits take place at the capitals of States whose

vote is sought. For their part, civil society organizations that follow or attend the General Assembly can, and often do, make their views known about which candidates should be chosen. On a few occasions those campaigns have been very public, generally to prevent a candidate from being elected on account of past attitudes considered inimical to human rights. Other than that, however, NGOs are not afforded a chance to participate in debates that should lead to the selection of judges and commissioners, as there is no forum for that purpose.

What happens next is that States engage in securing promises from other States that the latter will vote for the candidate. These promises are deals made in confidence and not publicized, although rumors generally spread about how many votes the candidate is already counting on or whether a State is leaning towards voting in favor of a certain candidate. In order to obtain more firm commitments, States engage in an exchange of votes, as in most cases there is more than one vacancy for the respective organ. But the exchange of votes is by no means limited to the same election and the same organ. States exchange a vote for a judge for a vote for a commissioner, and not infrequently for votes in elections for positions in organs not related to the IAHR, but also for other elected positions, and not even solely within the OAS.

The result is that successful candidates tend to be those whose home countries display a very active, committed and engaged diplomacy, and that have benefits to offer other States in exchange for their votes. The system does not automatically favor candidates from the most powerful States, but historically only very rarely the powerful States have been denied posts in the Commission. And conversely, some small Latin American States have had a comparatively harder time getting their candidates elected to the Court or the Commission. On the other hand, the system also favors voting in blocks, so that a number of small States that have language, geography and other interests in common generally do vote together and become crucial in electing certain members or denying others an election or reelection. Ultimately, the ballots are secret, which means that previously made promises to vote for a candidate are sometimes ignored, whether or not they have been made in exchange for other votes.

The system is, therefore, less than transparent and, perhaps as a result, it does not guarantee the best results. Of course, a perfect system that routinely or even consistently delivers the best results is simply not in the cards, at least while the appointment is ultimately done by member States via secret ballot. Any change in that would require an amendment to the Convention and the Statutes, which would not only be difficult but could also have negative consequences. That does not mean, however, that within the existing rules there is no room for improvement and innovation. It may take not only good ideas to make gains in the process of these elections, but also experimentation and trial and error. Perhaps the most important consideration is that changes should be made deliberately and openly and, especially, though broad participation of all stakeholders in the design, the evaluation and ultimate adoption of new methodologies.

2. The experience of other advisory mechanisms for international courts

In thinking about how to strengthen nomination and selection processes for the IAHRs, it is worthwhile to consider how other human rights courts and quasi-judicial human rights mechanisms have nominated and selected judges and commissioners. Of course, each system is unique, and there are no one-size-fits-all models to adopt. Nonetheless, it is useful to pull from other experiences ideas that may be useful as the IAHRs works towards an improved process.

With respect to the Court, we looked closely at the processes of the European Court of Human Rights (ECHR), the African Court of Human and Peoples' Rights, and the International Criminal Court. With respect to the Commission, the closest useful analogues we could find were the UN Treaty Bodies and Special Procedure mandates.⁶

a. European Court of Human Rights

The member States are to present up to three candidates each, which are then chosen by the Parliamentary Assembly of the Council of Europe. The list of criteria is similar to the IAHRs. They are: high moral character; the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence; be proficient in one official language of the Court; know the national legal systems and public international law; certain provisions on incompatibility; and that the lists of candidates should, as a general rule, contain at least one candidate of each sex.

The bulk of the requirements for the election of judges to the ECHR come into play in the internal processes in the member States. There are a number of non-binding guidelines on soliciting and drawing up a list of candidates, focused on the national selection body, which should be of balanced composition representing a range of stakeholders. This national body should conduct personal interviews based on a standardized format with each of the candidates, including evaluating language competencies. In practice, the national bodies vary: some countries use their Judicial Council or similar body to choose both national and international judicial

⁶ We present here an abbreviated summary. For a fuller treatment, see, for example, CEJIL, "The Selection Process of the Inter-American Commission and Court on Human Rights: Reflections on Necessary Reforms," at <https://www.cejil.org/en/publicaciones/position-paper-no-10-selection-process-inter-american-commission-and-court-human-right>; Laurence Burgoguel-Larsen, "Between Idealism And Realism: A Few Comparative Reflections And Proposals On The Appointment Process Of The Inter-American Commission And Court Of Human Rights Members," University Of Notre Dame, Center For Human And Civil Rights, May 2014, available at <https://humanrights.nd.edu/assets/133831/burgorguelarsenia1.pdf>; Judith Schönsteiner, "Alternative appointment procedures for commissioners and judges in the Inter-American System of Human Rights," *Revista IIDH*, Vol. 46 (2007), p. 193; Katya Salazar and María Clara Galvis, "Transparencia y participación en la selección de integrantes de la Comisión y de la Corte Interamericana de Derechos Humanos: una tarea pendiente," *Aportes 17*, available at http://dplf.org/sites/default/files/aportes_17_web.pdf.

candidates, while others use a more ad-hoc body. In most cases, the positions are advertised in the press and through legal and academic websites.

The list of candidates, along with their standardized curriculum vitae, goes to the Advisory Panel of Experts on Candidates for Election as Judge of the ECHR. The Panel is to advise whether the candidates meet the criteria set out in the Convention and the Guidelines of the Committee of Ministers. The Panel has seven members, each acting in their personal capacity. The Committee of Ministers appoints the members of the Panel, and the costs and secretariat are borne by the Court.

The procedure is confidential. The Chair of the Panel informs the state, giving reasons for its views. The state then can respond or withdraw the candidate and submit a new one. When a list of three candidates nominated by a High Contracting Party is being considered in accordance with Article 22 of the European Convention on Human Rights, the Panel shall make available to the Parliamentary Assembly in writing its views as to whether the candidates meet the criteria stipulated in Article 21§1 of the Convention. This information is also confidential.

The ECHR has a much larger number of judges, and one must be from each State. In addition, judges serve full time. These differences with the IAHRs are significant; however, there are some useful features of the procedure: the designation in each State of a nominating body with some degree of independence from the Executive, publicity for potential openings, interviews according to a standard format, and the creation of a standing Advisory Panel at the Council of Europe.

b. International Criminal Court

The ICC's Advisory Committee began as an initiative of the NGO Coalition for the International Criminal Court. For a number of years, the Coalition advocated for such a panel, and in addition asked all nominated candidates to complete questionnaires that provided additional information about their qualifications, held interviews with all candidates, organized public seminars with available candidates and experts, as well as hosted public debates between the candidates. In 2011, the Assembly of States Parties established an Advisory Committee on Nominations. The CICC has continued its own process despite the existence of this formal mechanism, at least to the extent of requesting, and publicizing, questionnaires administered to each of the 2014 candidates.

The Advisory Committee is supposed to make its recommendations available to States Parties and observers, through the Assembly of States Parties (ASP). In its internal procedure, the Committee decided that it would carry out personal interviews with each candidate, in addition to reviewing curriculum vitae and written documentation. The candidates come to where the Committee is meeting, and a 60-minute interview is conducted.

The Committee reports whether the candidate has the required fluency in one of the Court's official languages, and whether he or she meets the requirements set out in the Rome Statute. The evaluations are 1-2 paragraphs long and recount the candidates' experience relevant to the position. The Committee's job is made easier by the specific criteria in the Rome Statute for judges, which includes not only high moral character, independence and impartiality, but specifically competence and demonstrated experience in criminal law and procedure, or established competence and extensive experience in relevant areas of international law.

Moreover, in addition to language capability the States Parties are directed to consider the representation of the principal legal systems of the world; equitable geographical representation; fair representation of female and male judges; and the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children. Thus, the Committee simply applies these criteria. In contrast, the criteria for election to the Inter-American Commission and Court are minimal, and so an improved process would have to develop its own list of criteria, which might in many respects track those of the ICC, but would have some differences.

c. African Court on Human and Peoples' Rights

The process and criteria for nomination and election of judges in the African human rights system is quite similar to the IAHRs. There are some useful ideas regarding ensuring diversity on the Court. The constitutive instrument of the African Court on Human and Peoples' Rights mandates "[d]ue consideration shall be given to adequate gender representation in the nomination process." When voting on candidates, the Assembly of Heads of State and Government must ensure that "there is representation of the main regions of Africa and of their principal legal traditions," as well as "adequate gender representation."

d. United Nations Special Procedures Mandate Holders

The process of selection and appointment of mandate holders may hold some lessons, above all for the Commission. Mandate holders must have expertise, experience in the field of the mandate, independence, impartiality, personal integrity and objectivity. There must be due consideration to gender balance and equitable geographic representation. Individuals holding decision-making positions in Government or in any other organization or entity that may give rise to a conflict of interest with the responsibilities inherent to the mandate are excluded.

Anyone may nominate candidates, and there is a standing list. Upcoming vacancies are publicized. A consultative group made up of one representative of each Regional Group in the UN, appointed in his/her personal capacity, chooses a short list of the nominated candidates, consults with stakeholders, can add its

own nominees, and presents public and substantiated recommendations to the President of the Council, who consults further and makes the final decision. The candidate so chosen is then voted on by the Human Rights Council (HRC Resolution 5/1, 18 June 2007, Annex).

e. United Nations Treaty Bodies

As part of the process of strengthening the UN Human Rights Treaty Body system, the UN High Commissioner for Human Rights in 2012 recommended the following best practices for national nominations of expert members of treaty bodies, based on a multi-year consultation with States and other stakeholders:

1. The nomination of candidates through an open and transparent selection process from among persons who have a proven record of expertise in the relevant area (through relevant work experience, publications, and other achievements), and the willingness to take on the full range of responsibilities related to the mandate of a treaty body member.
2. The avoidance of nominations or election of experts while they are holding positions in government or any other positions that might expose them to pressures, conflict of interest, or generate a real or perceived negative profile in terms of independence that would impact negatively on the credibility of the candidates personally as well as on the treaty body system as a whole; or their resignation from the committee in question once elected.

In addition, the Commissioner supported the proposal for an open public space for all States parties to present their potential candidates or nominees for treaty bodies using modern technologies, including social media. Five former treaty body members from various professional backgrounds reflecting adequate balance in terms of sex, regions and legal systems would moderate this space (UN Doc. A/66/860, 26 June 2012). The use of former commissioners and judges in a nominating or advisory body might be useful in contemplating similar reforms to the IAHRs.

3. Proposals for the selection of candidates to the Inter-American Commission on and Court of Human Rights

a. Introduction

The shortcomings of the current process, and the existence of other international institutions that have taken steps to create an improved selection process, guide the Panel in its present recommendations. Our proposals are primarily two-fold:

- 1) That States create a procedure at the national level to allow for the selection of the best possible candidates to go before the General Assembly or the meeting of State Parties to the Convention; and
- 2) That the OAS election process be improved to avoid many of the shortcomings raised above.

We are aware that these proposals go further than the letter of the American Convention on Human Rights, but they do not require any amendments thereto. They would only need the political will of the States themselves to introduce these rules in their national legal systems, in order to make the supervisory organ of human rights truly respected and effective.

b. National-Level Processes

In each State there should be a formal, independent and non-political body to select the nominated candidates. In many States there are already institutions that could carry out this selection process by designating some of its members for the task; if not, the Panel finds that one such institution should be established.

Whichever modality is chosen, the members conducting the selection should be independent, impartial, knowledgeable about the way the Commission and Court on/of Human Rights should operate, and have an impeccable record in the area of human rights. This body should, ideally, be representative of different constituencies within the State. It should either be permanent or should be formed well in advance of upcoming elections.

States should nominate at least two candidates for election. Given the historic underrepresentation of women on both the Commission and the Court, one of the candidates should be a woman. This would ensure the possibility of a real election at the General Assembly or at the meeting of States Parties to the Convention, and would allow those electing the opportunity to choose candidates taking into consideration the need for human rights bodies that reflect the diversity of the people protected by their constituent instruments, including candidates from underrepresented communities. This process must ensure access to these positions by members of disadvantaged minorities or collectives in our hemisphere, such as indigenous peoples, Afro-descendants, the disabled, members of sexual minorities, and so on. In addition, both organs face a diversity of problems; therefore, it is

necessary as well that the composition of these organs have members with various fields of expertise and life experiences.

The selection of the nominees should be carried out with the full participation of all relevant stakeholders. In order to ensure that this happens, there would have to be a public call for candidates that fulfill all the requirements for service on the Commission or Court. This public call should be placed on the website of the Commission and the Court, as well as being broadly disseminated nationally.

Candidates should present evidence of their compliance with the requirements of the Convention and the Statutes of the respective body. Since the Convention and the Statutes of both the Commission and the Court do not go into detail about the qualifications that a member of any of the supervisory organs should have, it is necessary that they be broadened at the national level. To assess a candidate with regard to his or her recognized competence in human rights, the presentation of writings, opinions, or evidence of advocacy in the area of human rights should be requested. Each candidate's record should be scrutinized for independence and impartiality, as well as for any *appearance* of impropriety or lack of independence or impartiality.

Candidates should be asked to provide information about the activities they plan to carry out concurrently with their work as commissioners or judges. In the spirit of Article 71 of the Convention, the Panel recommends that States, as a matter of policy, refrain from proposing candidates that would – simultaneously with their service in the Court or Commission – occupy positions of authority and responsibility in any of the branches of government or in the diplomatic corps, or other services that might give rise to a conflict of interest that harms the reality or appearance of independence and impartiality any judicial or quasi-judicial organ must have.

Broad competences and bilingualism are essential criteria. Since all the work of the Commission and Court is performed in English or Spanish (at the Court, almost always in Spanish), fluency in one of these languages and at least passive knowledge of the other seems essential. Clarity that candidates are committed to be available for their work whenever they are needed is also important. With respect to the Commission in particular, broad exposure to and understanding of the political, social and cultural environment of the region and of its sub-regions, along with skills in negotiation and/or fact-finding are other useful characteristics.

Interviews should be a part of the selection process. Once the period for the presentation of candidates is over, the national selecting body should call the candidates for an interview to appraise their qualifications. There should be rules to allow the presence of delegates of the most representative national human rights non-governmental organizations in the interviews. The interviews should be carried out on the basis of a template that would guarantee equality to those being

interviewed. The questionnaires attached in Annex I and II may give an idea of the type of questions to be asked of the candidates.

The selecting body should further make the candidates aware of the limitations they will have, if elected, regarding their future field or work, so as to prevent any conflict of interest. The decisions of the selecting body should not be mandatory, but the political authorities could only deviate from its advice with a public, reasoned decision.

c. Elections at the OAS

The affirmation and realization of the principles of competence, independence and impartiality in the IAHRs are intimately related to the process of the election of suitable members of the Commission and Court. After the nomination of the candidates at the national level, the election process at the OAS General Assembly is the second and final stage where these values can be firmly and resolutely upheld.

The Panel strongly endorses the principle that States base elections strictly on both the merit and qualifications of candidates, and on their independence and impartiality. In light of this position, the Panel equally strongly opposes reciprocal political agreements (vote-trading) in the election process. To this end:

The Panel recommends that the OAS establish an ad hoc Advisory Committee responsible for ensuring the suitability of the candidates for service as a commissioner or judge. The Panel notes that the OAS may invite the Inter-American Juridical Committee to assist the Advisory Committee with its work pursuant to Article 99 of the Charter of the OAS. The Article provides that the Juridical Committee “is to serve the Organization as an advisory body on juridical matters.” Among such matters, the Juridical Committee could assist the ad hoc Advisory Committee on issues of suitability for positions at the Court and Commission.

The Advisory Committee’s terms of reference would be to assess and evaluate the candidates in regard to their suitability for service as a commissioner or judge. The Committee would be empowered to meet with candidates, compile independent information on the candidates, host public panels to afford the candidates an opportunity to introduce themselves to States, as well regional and national civil society associations. The Advisory Committee could also access the information compiled on the candidate at the national level. The Committee should assess the suitability of the candidates based not only on the criteria in regard to professional eligibility for election but also on the personal qualities of independence, impartiality, integrity, propriety, competence, diligence, fairness and empathy.

The Panel affirms the value of continued use of an interview process as an integral part of the work of the Committee. The Panel notes that the interview of

the candidates for the Commission before the Permanent Council in 2013 was deemed an effective and productive activity in facilitating the election of the best-suited candidates. The Panel further notes that some aspect of the compiled information should point to the candidate's motivation for wanting to be a commissioner or judge, as well as the candidate's views on challenges facing the IAHRs. These written positions can and should be further interrogated during the public interview process.

The Panel recommends that the Advisory Committee make a final written report to the OAS in regard to its evaluation of the candidates and that the States take into account this report in the casting of their votes. The Committee's task is not to endorse or object to individual candidates but to advocate for the integrity of the election process. The Committee's report, therefore, provides guidance and advice by way of independent assessments and independently compiled information that States can use in electing the most qualified persons.

The Panel encourages that the election process ought to take into account the need for diversity on the bench and at the Commission, whether based on gender, ethnicity, sexual orientation or other considerations. Selection between two or more suitable candidates may be determined on the basis of this need, provided that the candidates satisfy the criteria for eligibility and personal qualities. As noted, a broad range of experience, along with different and complementary skill sets, is particularly important for the Commission. The Panel further encourages States to elect the persons most qualified for appointment based on their relevant skills and other qualities and the needs of the Commission or Court for the fair, just and efficient discharge of its functions.

Annex I
Questionnaire for Candidates to the Commission

1. What particular aspects of your professional background qualify you to be elected as a member of the Inter-American Commission on Human Rights?
2. What are your particular areas of expertise in human rights?
3. Do you have knowledge or experience working with other legal systems?
4. It is expected that a Commissioner shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socio-economic status, political opinion, alienage or citizenship status and shall require staff subject to his or her direction and control to refrain from such words or conduct.
 - a) Do you disagree or have difficulty with this expectation?
 - b) Please provide any relevant information regarding your ability to meet this expectation.
5. Why do you want to be a Commissioner?
6. In your professional work, what specific activities demonstrate your commitment to and knowledge of human rights?
7.
 - a) Have you had the opportunity to use or apply the American Convention on Human Rights and/or other human rights or humanitarian law instruments in your work? Please describe your experience and direct us to the documents that evidence this application.
 - b) Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments? Please describe your experience, referring in particular to activities to publicize, defend or strengthen the Inter-American Human Rights system.
8. What are your specific language abilities?
9. What do you think are the most difficult challenges facing the Inter-American Human Rights System, and how will they affect your work on the Commission?
10. Please indicate any conflicts of interest that may prevent you from exercising independence and impartiality in your work as a member of the Inter-American Commission on Human Rights.

11. During your possible service as a Commissioner, what other positions or professional activities do you intend to engage in?
12. Please provide us with links to your significant writings, opinions, advocacy in the area of human rights.
13. What was the nomination process for your candidacy? Was it publicized?
14. Does your country have a specific organ and special procedure to effect a nomination process? Does it envision consultation with civil society?
15. Is there any other information that is not included in this questionnaire that you want to provide?

Annex II
Questionnaire for Candidates to the Court

1. What particular aspects of your professional background qualify you to be elected as a Judge of the Inter-American Court of Human Rights?
2. What are the qualifications required in the state of which you are a national for appointment to the highest judicial offices? Please explain how you meet these qualifications.
3. What are your particular areas of expertise in human rights?
4. Do you have knowledge or experience working with legal systems other than that of your country?
5. It is expected that a Judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socio-economic status, political opinion, alienage or citizenship status and shall require staff, court officials and others subject to his or her direction and control to refrain from such words or conduct.
 - a) Do you disagree or have difficulty with this expectation?
 - b) Please provide any relevant information regarding your ability to meet this expectation, including instances when you have met it in your career.
6. Why do you want to be elected as a Judge?
7. In your professional work, what specific activities demonstrate your commitment to and knowledge of human rights?
8.
 - a) Have you had the opportunity to apply the American Convention on Human Rights and/or other human rights or humanitarian law treaties in your work? Please describe your experience and direct us to the documents that evidence this application.
 - b) Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments? Please describe your experience; please reference in particular any activities to disseminate, uphold or strengthen the Inter-American human right system.
9. What are your specific language abilities?
10. What do you think are the greatest challenges facing the Inter-American System of Human Rights, and how would they affect your work as a Judge?

11. Judges are expected to be independent and impartial. Do you expect to have any difficulties in taking a position independent of, and possibly contrary to, your government? Please indicate any conflicts of interest that may prevent you from exercising independence and impartiality in your work as a Judge of the Inter American Court of Human Rights.
12. What other professional posts or activities do you foresee developing during your eventual term as Judge of the Court?
13. Please provide us with links to your significant writings, opinions, or advocacy in the area of human rights.
14. What was the nomination process for your candidacy, and did it follow a pre-established procedure? What was the role, if any, of civil society in the nomination process?
15. Is there anything else you would like to add that is not captured in the above questions?

Annex III

Panel Member Biographies

Marion Bethel read law at Cambridge University and was called to the Bar of England and Wales in 1985 and the Bar of The Bahamas in January 1986. She joined the Office of the Attorney General in The Bahamas where she practiced in both criminal and civil courts. In 1994 she commenced work in a private law firm. Ms. Bethel has been actively involved in the women's movement in The Bahamas and the Caribbean since the mid-1980s. Her work in human rights is principally in the areas of gender equality, reproductive rights, the elimination of violence against women and abolition of the death penalty. In 1992 she was a member of the Inter-American Commission on Women's Group of Experts that prepared model regulations on the prevention and eradication of violence against women. In 2012 Ms. Bethel produced a documentary film entitled "Womanish Ways: Freedom, Human Rights and Democracy, The Women's Suffrage Movement in The Bahamas 1948-1962," which chronicles the journey to the enfranchisement of women and underscores the significant contribution of this suffrage movement to the larger civil rights, majority rule and independence movements in The Bahamas. In July 2014 Ms. Bethel was awarded the Eleventh CARICOM Triennial Award for Women for her contributions to the fields of gender and development.

Belisário dos Santos Jr. has served as an attorney of politically persecuted and prisoners during the military dictatorship in Brazil. He was the President of the Association of Latin American Lawyers for the Defense of Human Rights and is currently the Vice-President of the Truth Commission of the Brazilian Bar Association, São Paulo Section. He is a member of the Commission for Justice and Peace of São Paulo. He is part of the National Commission of Brazil for the investigation of the politically disappeared and executed in Brazil. He is also a member of the International Court of Restorative Justice for El Salvador and of the International Commission of Jurists. He was the Secretary of State for Justice and Defense of Citizenship in São Paulo (1995/2000). He chairs the Board of Directors of TV Cultura, a public TV network in Brazil. He has made numerous research missions around the world to document human rights violations, and has authored several papers and lectures on issues of human rights.

Cecilia Medina Quiroga graduated from the School of Law of the University of Chile (1958). She earned her degree as Doctor of Laws at the University of Utrecht, The Netherlands (1988). She has lectured at the University of Chile, University Diego Portales and several European and American universities. She is the founder and former Director of the Centre for Human Rights of the University of Chile School of Law. She was also appointed professor at the Robert F. Kennedy Chair for distinguished Latin Americans at Harvard Law School (1997). She was a member (1995-2002) and President (1999-2001) of the United Nations' Human Rights Committee, and judge (2004-2007) and President (2008-2009) of the Inter-American Court of Human Rights. She participated in a five person commission – the Independent Panel on the International Criminal Court Judicial Elections – which

aimed to analyze the background of the candidates to the International Criminal Court under the requirements of the Rome Statute in order to serve as background for the Court's elections which took place subsequently. For her distinguished work in human rights, she was awarded the grade of Commandeur of the order of Oranje Nassau by the Kingdom of The Netherlands.

Juan E. Méndez is a Professor of Human Rights Law In Residence at the Washington College of Law, American University and since November 2010, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. In 2009 and 2010 he was the Special Advisor on Crime Prevention to the Prosecutor of the International Criminal Court. He was also Co-Chair of the Human Rights Institute of the International Bar Association in 2010 and 2011. Until May 2009 he was the President of the International Center for Transitional Justice (ICTJ) and in the summer of 2009 he was a Scholar-in-Residence at the Ford Foundation in New York. Concurrent with his duties at ICTJ, the Honorable Kofi Annan named Mr. Méndez his Special Advisor on the Prevention of Genocide, a task he performed from 2004 to 2007. Between 2000 and 2003 Mr. Méndez was a member of the Inter-American Commission on Human Rights of the American States, and served as its President in 2002. A native of Argentina, he is the author of various publications including the recent book, *Taking A Stand: The Evolution of Human Rights*, co-authored with Marjory Wentworth.

Naomi Roht-Arriaza is Distinguished Professor of Law at the University of California, Hastings College of the Law in San Francisco. Professor Roht-Arriaza is the author of *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (2005) and *Impunity and Human Rights in International Law and Practice* (1995), and coeditor of *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (2006). She is a coauthor of *The International Legal System: Cases and Materials* (Foundation Press 2010, 2015) and of numerous articles on accountability for international crimes, reparations, and corporate accountability. She earned a BA from UC Berkeley, a MA from the UC Berkeley Goldman School of Public Policy, and a JD from the UC Berkeley School of Law. After graduating from law school, she clerked for Judge James Browning of the Ninth Circuit Court of Appeals in San Francisco. In 2011 she was a Democracy Fellow at the U.S. Agency for International Development, and in 2012 she was a Senior Fulbright Scholar in Botswana. She is the president of the Board of the Due Process of Law Foundation (DPLF) and a legal advisor to the Center for Justice and Accountability.

Annex IV: Endorsing Organizations

The following organizations have diverse opinions about the candidates and the selection process that may differ from the Panel's assessments. Their endorsement is based on a commitment to the principle of fair and transparent elections.

Argentina

Centro de Estudios Legales y Sociales (CELS)
Facultad de Derecho de la Universidad de Palermo
Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP)

Bahamas

The Bahamas Crisis Center

Bolivia

Comunidad de Derechos Humanos
Fundación CONSTRUIR
Oficina Jurídica de la Mujer

Brasil

Justiça Global

Canada

Human Rights Clinic of the Human Rights Research and Education Centre, University of Ottawa

Chile

Centro de Derechos Humanos de la Universidad Diego Portales
Corporación Humanas - Chile
Observatorio Ciudadano de Chile

Colombia

Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR)
Corporación Humanas - Colombia
Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia)

Costa Rica

Asociación Costarricense de la Judicatura
Centro de investigación y Promoción para América Central de Derechos Humanos (CIPACDH)
Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM)
Defensa de Niñas y Niños - Internacional (DNI)

Ecuador

Clínica Jurídica del Colegio de Jurisprudencia de la Universidad San Francisco de Quito

Comisión Ecuménica de Derechos Humanos
Corporación Humanas – Ecuador

El Salvador

Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico
Colectiva de Mujeres para el desarrollo Local
Grupo de Monitoreo Independiente de El Salvador (GMIES)
Red Salvadoreña de Defensoras de Derechos Humanos

Guatemala

Asociación para el Estudio y Promoción de la Seguridad en Democracia (SEDEM)
Fundación Myrna Mack
Grupo Guatemalteco de Mujeres (GGM)
Red de la No Violencia contra las mujeres (REDNOVI)
Unidad de Protección a Defensoras y Defensores de Derechos Humanos (UDEFEQUA)

Honduras

Asociación de Jueces por la Democracia (AJD)
Comité de Familiares de Detenidos y Desaparecidos en Honduras (COFADEH)
Equipo de Reflexión Investigación y Comunicación (ERIC-SJ)

Jamaica

Caribbean Vulnerable Communities Coalition (CVC)
Jamaicans for Justice (JFJ)

México

Centro de Derechos Humanos de la Montaña Tlachinollan
Centro de Derechos Humanos de las Mujeres (CEDEHM)
Centro de Derechos Humanos Miguel Agustín Pro Juárez AC (Centro Prodh)
Ciudadanos en Apoyo a los Derechos Humanos, A.C. (CADHAC)
Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH)
Fundación para la Justicia y el Estado Democrático de Derecho
FUNDAR Centro de Análisis e Investigación
Grupo de Información en Reproducción Elegida (GIRE)
Instituto de Investigaciones Jurídicas UNAM (IIJ-UNAM)

Nicaragua

Centro Nicaragüense de Derechos Humanos (CENIDH)
Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua
IPAS Centroamérica
Movimiento Autónomo de Mujeres (MAM)

Panamá

Alianza Ciudadana Pro Justicia

Perú

Asociación Pro Derechos Humanos (APRODEH)
Coordinadora Nacional de Derechos Humanos (CNDDHH)
Instituto de Defensa Legal (IDL)

Puerto Rico

Instituto Caribeño de Derechos Humanos (ICADH)

República Dominicana

Participación Ciudadana
Colectiva Mujer y Salud

United States

Academy on Human Rights and Humanitarian Law, American University Washington College of Law
Center for Human Rights and Humanitarian Law, American University Washington College of Law
The Columbia Law School Human Rights Institute
International Human Rights Clinic, Seattle University School of Law*
Santa Clara University, School of Law, International Human Rights Clinic

Uruguay

Instituto de Estudios Legales y Sociales del Uruguay (IELSUR),

Venezuela

Centro de Derechos Humanos de la Universidad Católica Andrés Bello (UCAB)
Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989 (COFAVIC)
Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA)

Regional

Amnistía Internacional
Articulación Regional Feminista por los derechos humanos y la justicia de género
Asociación Interamericana para la Defensa del Ambiente (AIDA)
Asociadas por lo Justo (JASS-Mesoamérica)
Center for Justice and International Law (CEJIL)
Coalición Centroamérica Democrática (CAD)
Due Process of Law Foundation (DPLF)
Open Society Justice Initiative (OSJI)
Plataforma de Derechos Humanos, Democracia y Desarrollo
Red Latinoamericana y del Caribe para la Democracia
Robert F. Kennedy Human Rights
Transparencia Internacional

* The Clinic's position on this initiative does not represent the official views of Seattle University.